

THE
FOURTH PART
OF THE
INSTITUTES
OF THE
LAWS
OF
ENGLAND:
CONCERNING
The Jurisdiction of COURTS.

The Sixth Edition.

Proverb. 22. 28.

Ne transgrediaris antiquos terminos quos posuerunt patres tui.

Terminos propriæ potestatis egressus in aliam messem perperam mittit
falces suam.

Authore EDW. COKE *Milite.*

Hæc ego grandævus posui tibi candide Lector.

L O N D O N,

Printed by *W. Rawlins*, for *Thomas Basset* at the George near *St. Dunstons*
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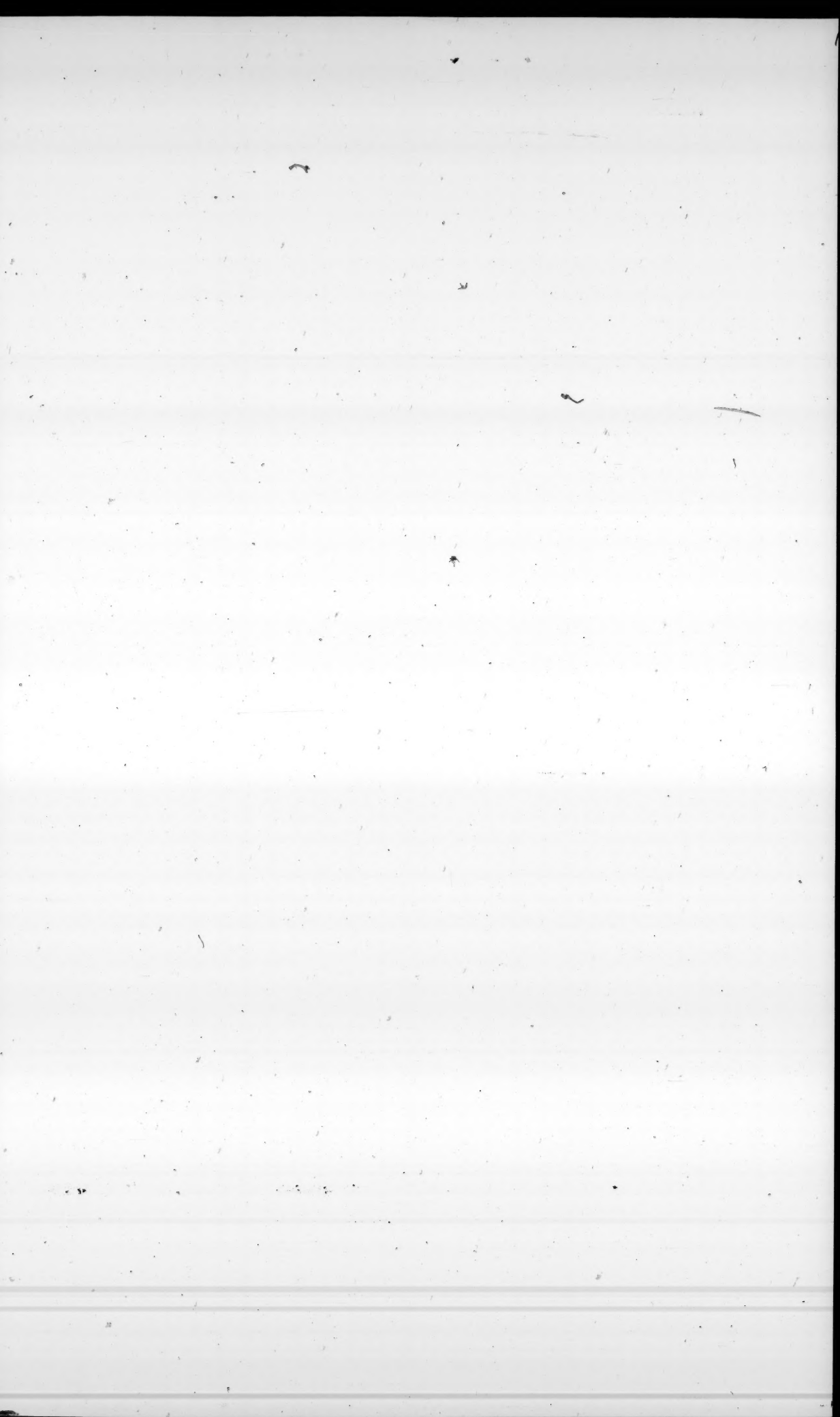


Vera Effigies Viri
Equitis aurati nuper
ad Placita coram



clariss EDOARDI COKE
Capitalis Iusticiarij
Rege tenenda assignati

R. White sculpsit



THE
FOURTH PART
OF
INSTITUTES
OF
LAW
OF
ENGLAND
IN
THE
COMMONS



Printed by W. Blandish, at the Press of the University of Cambridge, in the Strand, near the Temple Church, in the City of London.

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DE O,
PATRIÆ.
TIBI.

Proœmium.

IN the two former parts of the *Institutes* we have principally treated *De communibus placitis*, and of those two great Pronouns (*Meum & Tuum.*) In the Third we have handled *Placita Coronæ*, and Criminal causes. But because *Rerum ordo confunditur, si unicuique Jurisdictio non servetur.* We in this Fourth and last part of the *Institutes* are to speak of the Jurisdiction of the Courts of Justice within this Realm.

Jurisdictio est autoritas judicandi sive jus dicend^a inter partes de actionibus personarum & rerum secundum quod deductæ fuerunt in judicium per auctoritatem ordinariam seu delegatam: And again, ^b *Jurisdictio est potestas de publico introducta cum necessitate juris dicendi.* It is derived of *Jus*, and *ditio*, i. *potestas juris.*

Jurisdictio quid?
Bract. l. 5. fo. 400.
401.
Brit. fo. 1. & 32.
Fleta lib. 6. ca. 36.
unde, &c.
^b Lib. 10. f. 73. a.
En le case del
Marshallsea.

^c *Curia* hath two several significations, and accordingly it is severally derived. It signifieth the Kings Court, where his Royal Person, and his Honourable Household do reside, and is all one with *Palatium Regium*, and is derived *ἀπὸ τοῦ κυρίου*, of the Lord, because the Sovereign Lord resideth there. It also signifieth a Tribunal, or Court of Justice, as here it doth, and then it is derived *a cura*, *quia est locus, ubi publicas curas gerant.*

c Curia quid?

Festus.

Of Jurisdictions some be Ecclesiastical, and some Civil, or Temporal: of both these some be Primitive, or ordinary without commission; some derivative, or de-

A Proeme.

legate by commission. Of all these some be of Record, and some not of Record; some to enquire, hear and determine, some to enquire only; some guided by one Law, some by another; the bounds of all and every several Courts being most necessary to be known. For as the body of man is best ordered when every particular member exerciseth his proper duty: so the body of the Commonwealth is best governed when every several Court of Justice executeth his proper Jurisdiction. But if the eye, whose duty is to see, the hand to work, the feet to go, shall usurp and incroach one upon anothers work: As for example, the hands or feet, the office of the eye to see, and the like; these should assuredly produce disorder and darknes, and bring the whole body out of order, and in the end to destruction: So in the Commonwealth (Justice being the main preserver thereof) if one Court should usurp, or incroach upon another, it would introduce incertainty, subvert Justice, and bring all things in the end to confusion.

Now when I considered how much it would tend to the Honour of the Kings Majesty, and of his Laws, to the advancement of Justice, the quiet of the Subject, and generally to the good of the whole Commonwealth (no King in the Christian World having such Tribunals and Seats of Justice as his Majesty hath; which, God willing, in this Treatise we shall make to appear) that all the high, honourable, venerable and necessary Tribunals and Courts of Justice within his Majesties Realms and Dominions, as well Civil as Ecclesiastical, might be drawn together, as it were in one Map or Table, (which hitherto was never yet done) that the admirable benefit, beauty, and delectable variety thereof might be, as it were, *uno intuitu* beholden, and that the manifold Jurisdctions of the same might be distinctly understood and observed. We having (as elsewhere we have said) collected some materials towards the raising of this great and honourable building, and fearing that they should be of little use after my

In the Preface to
the First part of
the Institutes.

A Proeme.

my decease, being very short, and not easily of others to be understood, if I should have left them as they were.

Out of the duty that I owe to his most excellent Majesty, and my Zeal and Affection to the whole Commonwealth, I have adventured to break the Ice herein, and to publish more at large those things which in our reading we had observed concerning Jurisdiction of Courts. I confess it is a labour of as great pains as difficulty: for as in an high and large building, he that beholds the same after it is finished, and furnished, seeth not the carriages, scaffolding, and other invisible works of labour, industry and skill in Architecture: so he that looketh on a book full of variety of important matter, especially concerning sacred Laws, after it is printed and fairly bound and polished, cannot see therein the carriage of the materials, the searching, finding out, perusing and digesting of Authorities in Law, Rolls of Parliament, Judicial Records, Warrants in Law, and other invisible works, *tam laboris, quam* * *ingenii*: yet I was the rather encouraged thereunto, both because I have published nothing herein, but that which is grounded upon the Authorities and Reason of our Books, Rolls of Parliament, and other judicial Records, and especially upon the resolution of the Judges of later times upon mature deliberation in many cases never published before; wherewith I was well acquainted, and which I observed and set down in writing, while it was fresh in memory.

* *Minerva, quasi
nervos minuens.*

There be amongst the Kings Records divers and many Rolls, whereof you shall find little or no mention (that we remember) in our Books, viz. *Rot. Parliament. Rot. Placitorum Coronæ, Rot. Placitorum Parliament. Rot. Claus. Rot. Brevium, Finium, Inquisitionum, Liberationum, Rot. Cartarum, Eschaetriæ, Pat. Rot. Ordinationum, Rot. Franciæ, Scotiæ, Vasconiæ, & Almanicæ, Rot. Romana, Rot. Judæorum, Rot. Ragman, Brangwin,*

A Proeme.

Rot. Contrariensium (And the reason of the naming of this Roll thus was, for that *Thomas* Earl of *Lancaster* (a man singularly beloved) taking part with the Barons against King *E. 2.* in hatred of the *Spencers*, it was not thought safe for the King, in respect of their power and greatness, to name them Rebels or Traytors, but *Contrarients*) and some others. In this and other parts of our Institutes we cite divers Records out of many of these Rolls : Herein, as in the rest of our works, you shall observe, that in the course of our reading we took all in our way, and omitted little or nothing, for there is no knowledge (seemeth it at the first of never so little moment) but it will stand the diligent observer in stead at one time or other.

And thus for all our pains, wishing the benevolent Reader all the profit, we (*favente Deo & auspice Christo*) begin with the High and most Honourable Court of Parliament.



OF THE
High and most Honourable
COURT
OF
PARLIAMENT.

CAP. I.

Of what Persons this Court consisteth.



His Court consisteth of the Kings Majesty sitting there as in his Royal politick capacity, and of the three Estates of the Realm, viz. Of the Lords Spiritual, Archbishops and Bishops, being in number 24, who sit there by succession in respect of their Counties, or * Baronies parcel of their Bishopricks, which they hold also in their politick capacity; And every one of these when any Parliament is to be holden, ought, ex debito iustitiæ, to have a Writ of Summons. The Lords Temporal, Dukes, Marquisses, Earls, Viscounts, and Barons, who sit there by reason of their dignities which they hold by descent or creation, in number at this time 106: and likewise every one of these being of full age ought to have a Writ of Summons ex debito iustitiæ. The third estate is the Commons of the Realm, whereof there be a Knights of Shires or Counties, Citizens of Cities, and Burgeses of Burghes. All which are respectively elected by the Shires or Counties, Cities and Burghes, by force of the Kings Writ ex debito iustitiæ, and none of them ought to be omitted: and these represent all the Commons of the whole Realm, and trusted for them, and are in number at this time 493.

See the first part of the Institutes, Sect. 164. for the ancient and latter names of Parliament, and the antiquity thereof.

Modus tenendi Parl. cap. 2.

* All the Bishopricks of England be of the Kings progenitors incorporation, to have succession and foundation, *Tenendum per comitatum seu Baroniam*, and were of ancient time donative, and these Bishops are called by Writ to the Parliament as

other Lords of Parliament be. Rot. Claus. 9 H. 4. m. 1. Glanvil lib. 7. c. 1. vers. finem. Bract. lib. 5. f. 412. 427. a. 10 H. 4. 6. 21 E. 3. 60. 17 E. 3. 40. 48. 73. *Dicitur* Dean of London. a 5 R. 2. cap. 4. Stat. ult. so they are ranked. Prov. 11. 14. *Salus ubi multa consilia.* Rot. Parl. 7 H. 4. nu. 2. *Multorum consilia requiruntur in magnis.*

Of what number.

In the beginning Romulus ordained an hundred Senators for the good government of the Commonwealth: afterwards they grew to 300, and so many were of the House of Commons in Fortescues time; who treating with what gravity Statutes are made, saith; *Dum non unus, aut centum solum consultorum virorum prudentia, sed plus quam trecentorum electorum hominum, quali numero olim Senatus Romanorum regebatur, ipsa statuta edita sunt.*

Festus.

Fortescue c. 18. f. 40.

Erant autem Senatores majorum gentium, & Senatores minorum gentium, ex patriciis & nobilibus electi, hii ex populo.

Cicero lib. 1. Epist. famil.

And it is observed that when there is best appearance, there is the best success in Parliament. At the Parliament holden in the seventh year of the reign of H. 5. holden befoze the Duke of Bedford, Guardian of England, of the Lords Spiritual and Temporal there appeared but thirty in all: at which Parlia-

Rot. Parl. 7 H. 5.

ment

Rot. Parl. 50 E. 3.
Bonum Parliamentum.

* 14 H. 8. 3. per
Fincux Ho lensh.
Chron. 34 H. 8.
956. 957. Dier
38 H. 8. 60. 61.
2 & 3 E. 6. cap. 36.
a 28 E. 3. c. 6. Re-
gist. 177. F. N. B.
164. k Pl. R. 232.
Stanf. Pl. Cor. 49.
b For this distinc-
tion, see the 2.
part of the Insti-
tutes, Mag. Cart.
Verb. [per pares]
fol. 28.

Of ancient time
both Houses sat
together.

Rot. Parl. 50 E. 3.
nu. 8.

See the 1. part of
the Institutes, Sect.
164. ubi supra.
a Breve Parliam.
b Brevia originalia
de vasto, &c.
c W. 1. in exordio.
d Glanvil. lib. 8. c.
10. & lib. 13. c. 32.
Lib. 9. cap. 10.
Brafton lib. 3.
traç 2. cap. 3.
e Æneidos. 10.
concilium deorū.

ment there was but one Act of Parliament passed, and that of no great weight. In Anno 50 E. 3. all the Lords appeared in person, and not one by Proxy. At which Parliament, as it appeareth in the Parliament Roll, so many excellent things were sped and done, as it was called bonum Parliamentum.

And the King and these three Estates * are the great Corporation or Body politic of the Kingdom: and do sit in two houses, viz. the King and Lords in one house called the Lords House, and the Knights, Citizens and Burgeses in another house, called the House of Commons.

a For this word [Commons] see the Statute of 28 E. 3. whereby it is provided that the Coroners of Counties shall be chosen in full County per les Commons de mesme les Counties. Commons are in legal understanding taken for the frank Tenants or Free-holders of the Counties. b And whosoever is not a Lord of Parliament and of the Lords House, is of the House of the Commons, either in person, or by representation, partly coagmentative, and partly representative.

But of ancient time both Houses sat together. In 8 H. 4. an Act of Parliament concerning the Succession of the Crown intailed to H. 4. whereunto all the Lords fevally sealed, and Sir John Tebetot the Speaker in the name of the Commons put to his seal.

Note, that the Letters to the Pope by all the Nobility of England at the Parliament holden in 21 E. 3. the conclusion is this, In cujus rei testimonium sigilla nostra tam pro nobis quam pro tota Communitate præd. Regni Angliæ præsentib. sunt appensa. Hereby I gather, that at this time the Commons had no Speaker, but both Houses sat together, for if the Commons had then had a Speaker, they would have appointed him to have put to his seal for them, as in 8 H. 4. they did. Certain it is, that at the first both Houses sat together, as it appeareth in the Treatise De modo tenendi Parliamentum. Vide Rot. Parl. 5 E. 3. nu. 3. and in other places in the same Roll, and in 6 E. 3. in divers places it appeareth that the Lords and Commons sat together, and that the Commons had then no continual Speaker, but after consultation had, they agreed upon some one or more of them that had greatest aptitude for the present business to deliver their resolution, which brought great delays of proceeding, and thereupon the Houses were divided, and the surest mark of the time of the division of them is, when the House of Commons at the first had a continual Speaker, as at this day it hath.

After the division the Commons sat in the Chapter house of the Abbot of Westminster.

And this Court is aptly resembled to a Clock, which hath within it many wheels, and many motions, all as well the lesser as the greater must move: but after their proper manner, place, and motion; if the motion of the lesser be hindered, it will hinder the motion of the greater.

The Names.

This Court is called by several names, as anciently [Witenage Mote] Conventus sapientum; Parliamentum, of which we have spoken in another place; Comitia, à coeundo, quia coeunt ibi deliberaturi de a arduis & argentibus negotiis Regni, & statum, & defensionem Regni, & Ecclesiæ Anglicanæ concernentibus. b Commune concilium Regni, c Generale concilium Regni, & d Concilium Regni, and Assisa ab assidendo, as Assisa de Clarendon 22 H. 2.

Upon some of the Records and Rolls of the Parliament it is written.

Perlege quæ Regni clarissima Conciliorum

Sunt monumenta, aliter nil præter somnia cernis.

e And Virgil writing of the Parliament of the Gods useth the same word of Concilium in the same sense.

Panditur interea domus omnipotentis Olympi,

Conciliumq; vocat divum pater, atq; hominum Rex; &c.

Tacitus in vita Agricolæ in the time of the Brittons calleth it Conventus, à conveniendo.

Ingulphus

Ingulphus, who died before 1109 saith, Rex Eldredus convocavit magnates, 34 H.6.46. a. Pri-
Episcopos, proceres, & optimates ad tractandum de publicis negotiis Regni. lot.
Tully calleth it, Confessum Senatorum, à confidendo.

Parliaments in Scripture.

And the like Parliaments have been holden in Israel, as it appeareth in the 1 Chron. ca. 28.
holy History. Convocavit David omnes Principes Israel, duces, tribunos, & præ-
positos turmarum, tribunos, centuriones, & qui præerant substantiis & possessionibus
Regis, filiosque suos, cum eunuchis, & potentes, & robustissimos quoque in exer-
citu Jerusalem. And when they were all assembled, the King himself shewed the
cause of calling that Parliament. Audite me fratres mei, & populus meus, cogi-
tavi ut ædificarem in qua requiesceret arca foederis Domini, & ad scabellum pedum
Dei nostri, & ad ædificandum omnia præparavi, &c. b And the like Parliament
did King Solomon son of King David hold. Congregavit Solomon majores natu
Israel, & cunctos principes, tribunos, & capita familiarum de filiis Israel in Jerusa-
lem, &c. c There was also a Parliament holden in the time of the Judges.
Convenit universus Israel ad civitatem quasi homo unus eadem mente, & uno con-
silio, &c. And that Parliament builded on such unity had blessed success.

Preparation.
Actus activorum
sunt in patiente
dispositio, saith
the Philosopher.
b 2 Chron. ca. 5. 2.
c Judges 20. 11.
Conventus.

Of this Court of Parliament the King is Caput, principium & finis. And as
in the natural body when all the sinews being joyned in the head do joyn their
forces together for the strengthening of the body, there is ultimum Potentiæ: so
in the politick body when the King and the Lords Spiritual and Temporal,
Knights, Citizens, and Burghesses, are all by the Kings command assembled
and joyned together under the head in consultation for the common good of the
whole Realm, there is ultimum Sapientiæ.

Modus tenend.
Parl.

What properties a Parliament man should have.

It appeareth in a Parliament Roll, that the Parliament being, as hath been
said, called Commune consilium, every member of the House being a Counsellor,
should have three properties of the Elephant: First, That he hath no gall:
Secondly, That he is inflexible, and cannot bow: Thirdly, That he is of a most
ripe and perfect memory: which properties, as there it is said, ought to be in
every member of the great Council of Parliament. First, To be without gall,
that is, without malice, rancor, heat, and envy. In Elephant melancholia transit
in nutrimentum corporis. Every gallish inclination (if any were) should tend to
the good of the whole body, the Commonwealth. Secondly, That he be constant,
inflexible, and not to be bowed, or turned from the right, either for fear, reward,
or favour, nor in judgment respect any person. Thirdly, Of a ripe memory,
that they remembering perils past, might prevent dangers to come, as in that
Roll of Parliament it appeareth. Whereunto we will add two other proper-
ties of the Elephant, the one, that though they be Maxima virtutis, & maximi
intellectus, of greatest strength and understanding, tamen gregatim semper incedunt,
yet they are sociable, and go in companies: for animalia gregalia non sunt
nociva, sed animalia solivaga sunt nociva. Sociable creatures that go in flocks or
heards are not hurtful, as Deer, Sheep, &c. but Beasts that walk solely, or sin-
gularly, as Bears, Foxes, &c. are dangerous and hurtful. The other, that the
Elephant is Philanthropos, homini erranti viam ostendit: and these properties
ought every Parliament man to have.

Rot. Parl. anno
3 H.6. nu. 3.

Virg. Georg.
Illum non populi
fascies, non purpu-
ra regum Flexit---

Aristotle.
Bartholomæus.

Of Records of Parliament.

The reason wherefore the Records of Parliament have been so highly extolled,
is, for that therein is set down in cases of difficulty, not only the judgment,
or resolution, but the reasons, and causes of the same by so great advice.* It is

* Mich. 5 E.1. in
communi banco.
Rot. 100. Linc.
Pasc. 19 E.1. Rot.
145. Abbot de

Selby. Pasc. 28 E.1. Coram Rege Rot. between the King and Venables in Quare Impedit. Mich. 3 E.2. Coram Rege
Rot. 6. and many others where the causes and reasons pro & contra have been set down, &c. 6 E.3. fol. 5. per Herl:
3 E.4. b. 7. a. 19 H.6.63. a. per Fray.

true that of ancient time in judgments at the Common Law, in cases of difficulties either criminal, or civil, the reasons and causes of the judgment were set down in the Record, and so it continued in the Reigns of E. 1. and most part of E. 2. and then there was no need of Reports: but in the Reign of E. 3. (when the Law was in his height) the causes and reasons of judgments, in respect of the multitude of them, are not set down in the Record, but then the great Casuists and Reporters of cases (certain grave and sad men) published the cases, and the reasons and causes of the judgments or resolutions, which from the beginning of the Reign of E. 3. and since we have in print. But these also, though of great credit, and excellent use in their kind, yet far underneath the Authority of the Parliament Rolls, reporting the Acts, Judgments, and resolutions of that highest Court.

22 E. 4. 18. per Hussey, Rot. Par. 19 E. 1. Rot. 12. Margery Weylands case. Nota quia optime, &c.

The Summons of Parliament.

Prov. 13. 16. Sapientia omnia agit cum consilio. Vide infra. These Writs of Summons you shall find in former times in the close Roll, for they are not in the Register, and in that Roll are the Writs de expensis militum, civium & burgensium, & procuratorum cleri, and these are in the Register also.

The King de advisamento concilii (for so be the words of the Writ of Parliament) resolving to have a Parliament, doth out of the Court of Chancery send out Writs of Summons at the least forty days before the Parliament begin: Every Lord of Parliament, either Spiritual, as Archbishops, and Bishops, or Temporal, as Dukes, Marquisses, Earls, Viscounts and Barons, Peers of the Realm, and Lords of Parliament ought to have several Writs of Summons.

And these are in the Register also.

Temporal Assistants.

* Regist. 261. F. N. B. 229. a. lb. called Attendants.

And all the Judges of the Realm, Barons of the Exchequer of the Coif, the Kings learned Counsel, * and the Civilians Masters of the Chancery are called to give their assistance and attendance in the upper house of Parliament, but they have no voices in Parliament; and their Writs differ from the Writs to the Barons: for their Writs be, Quod interfutis nobiscum & cum ceteris de concilio nostro (and sometimes nobiscum only super premissis tractaturi, vestrumque consilium impensuri; but the Writ to the Barons is, Quod interfutis cum prelatiis, magnatibus & proceribus super dictis negotiis tractaturi, vestrumque consilium impensuri.

Spiritual Assistants. Procuratores cleri.

Mod. tenend. Parl. 2. 2. Rot. Claus. 8 E. 2. m. 15. Dorf. lb. 5 E. 2. m. 15. lb. 11 E. 3. part. 1. m. 1. lb. 22 E. 3. part. 2. m. 3. lb. 36 E. 3. m. 16. Rot. Par. 18 E. 3. nu. 1. 3 R. 2. 11 R. 2. 21 R. 2. Procuratores Cleri. Reg. 261. a. F. N. B. 229. a. Procuratores de Clero. In fascicul. literarum procurat. &c. 13 H. 4. & 5 H. 5. See hereafter tit. Proxies.

And in every Writ of Summons to the Bishops, there is a clause requiring them to Summon these persons to appear personally at the Parliament, which is in these words, Præmonientes Decanum & capitulum Ecclesiæ vestræ Norwicensis, ac Archidiaconos totumque clerum vestræ Diocesis. quod iidem Decani & Archidiaconi in propriis personis suis, ac dictum capitulum per unum, idemque clerus per duos procuratores idoneos plenam & sufficientem potestatem ab ipsis capitulo & clero divisim habentes prædictæ die & loco personaliter interfut ad consentiendum hiis quæ tunc ibidem de communi consilio dicti Regni nostri divina favente clementia contigerit ordinari: And the Bishop under his seal make Certificate accordingly. And these are called Procuratores cleri, and many times have appeared in Parliament as Spiritual Assistants, to consider, consult, and consent, ut supra, but had never voices there, because they were no Lords of Parliament. Some have thought, that because the Clergy were not party to the election of the Knights, Citizens, and Burgeses, that these Procuratores Cleri were appointed to give their consent for them, but then they should have had voices, which questionless they never had. And by the words of the Writ it was to consent to those things which by the Common Council of the Realm should happen to be ordained, so as their consent was only to such things as were ordained de communi concilio Regni, and that there might be an Act of Parliament without them: and in many cases multitudes are bound by Acts of Parliament which are not parties to the elections of Knights, Citizens, and Burgeses, as all they that have no freehold

fræhold, or have fræhold in Ancient demesne, and all women having fræhold or no fræhold, and men within the age of one and twenty years, &c. And it appeareth by the Treatise De modo tenendi Parliament, &c. that the Proctors of the Clergy should appear, cum præsentia eorum sit necessaria (which proveth that they were voiceless Assistants only) and having no voices, and so many learned Bishops having voices, their presence is not now holden necessary.

It is to be observed that in the Writs of Parliaments to the Bishops (being Lords Ecclesiastical secular) they are named by their Christian names, and name of their office; as, Rex, &c. Reverendissimo in Christo patri Johanni eadem gratia Archiepiscopo Cantuar'. or Rex, &c. Reverendo in Christo patri Johanni Episcopo Norwicensi. &c. But if the Surname be added it makes not the Writ vicious.

But the Abbots and Priors being Lords of Parliament, religious and regular, might be named by the name of their office only, as, Rex dilecto sibi in Christo Abbati Sancti Edmondi de Bury, &c.

A Duke, a Marquis, an Earl, and Viscount are regularly named by their Christian names, and the names of their dignities, and rarely (yet sometimes) by their Surnames; nor are they named by their Knighthood, if they have any, but rarely. If a Baron be a Knight, he is regularly named by his Christian name, Surname, and by Miles, or Chivalier, and his Barony. If he be no Knight, then he is named by his Christian name, and the name of his Barony; but if the Surname be added, it maketh not the Writ vicious. And this holdeth as well where the Baron taketh his dignity of a place, as where he taketh it of his Surname; but where the Surname is dignified, there to make a formal Writ, it is good to add the place of his Barony.

At ancient time the Temporal Lords of Parliament were commanded by the Kings Writ to appear, In fide & homagio, quibus nobis tenemini, and in the Reign of E. 3. in fide & ligeancia, and sometime in fide & homagio, but at this day constantly in fide & ligeancia, because at this day there are no feodal Baronies, in respect whereof homage is to be done, which in 21 E. 3. was the true cause of this alteration.

The Ecclesiastical Barons secular or regular were commanded by the Kings Writ to be present, in fide & dilectione, quibus nobis tenemini, as the Bishops are at this day.

We find in the Rolls of Parliament a Writ in Anno 23 R. 2. and successively in every Parliament until and in the fifth year of H. 6. amongst the Barons that came to the Parliament, it is said Magistro Thomæ de la Warre, and some say that the addition of Magister, was to distinguish him from them that were Knights: as in the Roll of 1 E. 4. amongst the Barons it is said, Johanni de Audely armigero, for that the rest of the Barons (saving himself) and the Lord Clynton were Chivaliers. And others do hold that he was of the Clergy before the dignity descended to him, and in that respect he was called Magister.

In the Roll of 5 H. 5. and in many succeeding Rolls we find Baro applied to the Lord of Greystock, as Radulpho Baroni de Greystock, and Johanni Baroni de Greystock, and to few other.

In many Rolls we find the Barons that were Knights, named Chivaliers, wherein we observed, that they liked to be called Chivaliers rather than Milites after the legal word (for Eques auratus is not used in Law.) For example, In anno 1 E. 4. Edmundo Grey de Ruthin Chivalier, &c. and under subscribed thus, Milites omnes, exceptis Johanne de Audely Armigero, & Johanne Domino de Clynton. And in 3 E. 4. all the Barons (saving the Lord Scales) have the additions of Chivaliers, and subscribed thus, Equites aurati omnes præter dominum Scales. And in 3 E. 4. all the Barons have the addition of Chivaliers, and therefore subscribed thus, Equites aurati omnes: Whereby and by many others it appeareth that the Barons, if they were Knights, were so named; and that they were not named Chivaliers unless they were Knights. But in the Reign of H. 8. and

12 E. 3. br'e 480.

31 E. 3. br'e 342.

32 E. 3. br'e 291.

7 H. 6. 27.

21 E. 4. 15.

For these regular

Lords of Parlia-

ment, and when

they ceased, see

hereafter pa.

7 E. 4. br'e 163.

7 H. 6. 29.

11 E. 3. br'e 473.

11 E. 3. tit. Br'e

473.

Since, Barons are named Chivaliers in the Writ of Summons, though they be no Knights.

De Baneretto, & unde.

Baner legally Banerium, vexillum, Banerher: unde Banerherius or Banerius, i. Baro, vexillarius major, & Banerrettus a diminutive of Banerius, vexillarius minor. A Baron is called Banerherius or Banerius of the Baner, (being the Ensign of his honour) serveth for a guide and direction: so the Baron observing the end of his Nobility should be an example and guide to others, as well in war as in peace, in all notable habilities and virtues, and so of the Baneret: both the Baron and the Baneret hath one kind of Baner: for the Baneret is created in the field in the Kings Host, and (amongst other things) by cutting the sharp point of his Pennon, and making it a Baner, i. Vexillum Baronis: so as the Baneret hath the Baner, but not the dignity of the Baron. And this doth notably appear by the case in 22 E. 3. the very words of which resolution I will first set down, and then the effect, Un fuit challenge purceo que il fuit a Baner, & non allocatur: car sil soit a baner, & ne tient per Barony, il serra in Assise. That is, one was challenged because he had the Baner and was a Baneret, & non allocatur by the rule of the Court, because albeit he had the Baner, yet ne tient per Barony, that is, he was no Baron of Parliament.

22 E. 3. 18. tit. Chalkoge, 119.

Nota seriem temporis, John Coupland a valiant Leader in Anno 20 E. 3. near Durham, at Nevils Castle, took in aperto praelio, David the second, King of Scots: for which King E. 3. created him Knight Baneret, and gave him lands and livings, and in 22 E. 3. the case in Law fell out.

For this order of Knighthood see Camdens Britannia 124. and for this case of Sir John Coupland, Camden in Linc. pag. 618. See 35 H. 6. fo. 46. Where the challenge was, that he was a Baneret, a Lord of Parliament. See 48 E. 3. 30. 48 Ass. pl. ultimo. Lib. 6. fo. 55. But Sir John Coupland was not the first Baneret that England had, as * some have thought, and was with us before the Reign of E. 3. for in Pelle exitus anno 8 E. 2. in Scaccario Johannes de Cromlewele Banerettus. And ex compoto Garderoba Anno 9 E. 2. Nicholaus de Gray was declared by Writ of E. 2. to be de familia regis tanquam Banerettus, both for his precedence and gallery.

* Speed.
See hereafter,
pag.

For summoning of the Commons a Writ goeth out to the Lord Warden of the Cinque Ports for the election of the Barons of the same, who in Law are Jurgeses, and to every Sheriff of 52 Counties in England and Wales for the choise and election of Knights, Citizens and Jurgeses within every of their Counties respectively.

The beginning of the Parliament.

Rot. Parl. 3 H. 6. nu. 1.

H. 6. sat in Parliament when he was 3 or 4 years old, and so did he in the 6 and 8 year of his Reign.

The Royal Person represented two ways.

a Rot. pat. An. 24. E. 3. m. 18.

The Patent of the Gardianship.

See Rot. Parl.

25 E. 3. nu. 10.

At the return of the Writs the Parliament cannot begin but by the Royal presence of the King either in Person or by Representation. By Representation two ways, either by a Guardian of England by Letters Patents under the Great Seal when the King is in remotis out of the Realm: or by Commission under the Great Seal of England to certain Lords of Parliament representing the person of the King, he being within the Realm in respect of some infirmity.

a The patent of the Office of a Gardien of England reciteth his speedy going beyond Sea, or in remotis, or urgent occasions and the cause thereof. Nos quod pax nostra tam in nostra absentia quam presentia inviolabiliter observetur, & quod fiat communis justitia singulis conquerentibus in suis actionibus & querelis, de fidelitate dilecti & fidelis nostri Edwardi ducis Cornubiæ, & comitis Cestræ filii nostri primogeniti plenarie confidentes, constituimus ipsum custodem dicti regni nostri ac locum nostrum tenent' in eodem regno quamdiu in dictis transmarinis partibus moram fecerimus, vel donec inde aliud duxerimus. (And this is that capitalis Justiciarius mentioned in Mag. Carta cap. 11. when the King is extra regnum) with a clause of assistance. But yet if any Parliament is to be holden, there must be a special Commission to the Gardien, to begin the Parliament, and to proceed therein: but the Telle of the Writ of Summons shall be in the Gardiens name.

A Parliament was holden in quinti quinto, viz. anno 5 H. 5. before John Duke of Bedford, Brother and Lieutenant to the King, and Gardien of England, and was summoned under the Teste of the Gardien or Lieutenant [* It is enacted, that if the King being beyond the Seas, cause to summon a Parliament in this Realm, by his Writ under the Teste of his Lieutenant: and after such summons of Parliament gone out of the Chancery, the King arriveth in this Realm: that for such arrival of the same King such Parliament shall not be dissolved, but the Parliament shall proceed without new summons.]

In 3 E. 4. a Parliament was begun in the presence of the King, and prorogued until a further day: and then William Archbishop of York, the Kings Commissary by Letters Patents, held the same Parliament, and adjourned the same, &c. The cause of the said Prorogation was, for that the King was enforced to go in person into Gloucestershire to repress a Rebellion there.

As hath been said, the Kings person may be represented by Commission under the Great Seal to certain Lords of Parliament authorizing them to begin the Parliament, and both the Gardien and such Commissioners do sit on a form placed near to the degrees that go up to the Cloth of Estate.

And in 28 Eliz. the Queen by her Commission under the Great Seal bearing date the 28 of October anno 28, reciting that she for urgent occasions could not be present in her Royal person; did authorize John Whitgift Archbishop of Canterbury, William Baron of Burghley Lord Treasurer of England, and Henry Earl of Derby, Lord Steward of the Household then being, Ad inchoandum, &c. tenendum, &c. & ad procedendum, &c. & ad faciend' omnia & singula, &c. nec non ad Parliamentum adjournandum & prorogandum, &c. which Commission is entred in hæc verba, in the Journal Book in the Lords House, and in the upper part of the page above the beginning of the Commission is written, Domina Regina representatur per Commissionarios, viz. &c. The 29 day of October, the said Commissioners sitting on a form before the Cloth of Estate after the Commission read, adjourned the Parliament until the 15 of February following, &c. And this Parliament began the 29 of October, and not the 15 of February, wherein the printed Book is mistaken, for then the Parliament begun, and was prorogued.

Thus much shall suffice, when the Kings person shall be represented.

But when the Parliament shall not begin at the day of the retozne, but for certain urgent causes then to be prorogued until another day, and then to be holden before the King, there is a ready way for the effecting thereof, and that is by Writ Patent under the whole Great Seal, reciting the Writ of Summons, and to bear Teste before the retozne thereof, and signed above with the Kings sign Manual, and directed Prælati, magnatibus, proceribus hujus regni, ac militibus, civibus, & burgensibus convocatis & electis ad hoc Parliamentum pro quibusdam causis & considerationibus, &c. to prorogue the Parliament to a certain day, and at the retozn of the Summons, this Writ being read in the Upper House before certain of the Lords of Parliament, and of the Commons there assembled, and prorogation made accordingly, the Parliament is prorogued: And this was so done in Anno 1 Eliz. the retozn of the Summons of Parliament being the 9 of October, and by such a Writ it was prorogued until the 25 of February following, at what time in judgment of Law the Parliament did begin, and was holden, and not on the 9 of October as it was adjudged. A like prorogation was made by the Queens like Writ of the Parliament holden Anno 5 Eliz. at both which days of prorogation, the Parliament did hold before the Queen her self, until the dissolution of the same, which Writs are entred in hæc verba in the Journal book.

What is to be done the first day of the Parliament.

On the first day of the Parliament, the King, or most commonly the Lord Chancellor, or Keeper of the Great Seal in the presence of the Lords and Commons do shew the causes of the calling of his High Court of Parliament, but the

Rot. Parl. 5 H. 5. nu. 1.
* 8 H. 5. cap. 1. in print.

Nota, Quia in presentia majoris cessat potestas minoris.

And the Letters Patents of this office is with a

quandiu in partibus transmarinis moram fecerimus, &c. ut sup.

Rot. Parl. 3 E. 4. a Rot. 1. 13, 14.

Like Letters Patents to the Earl of Warw. in the same Parliament. nu. 15. Parl. 28 Eliz.

See an excellent president hereof, Rot. claus. Anno 8 E. 2. 7. Sept. m. 26. & 1 pars par. An. 8 E. 2. m. 26. with a commandment of attendance.

Simile 10 E. 2.

2 part par. m. 20.

13 E. 3. nu. 1.

Stat. 2. in absentia Gardiani Angliæ.

Prorogued Writ Patent.

Dier 3 El. 203. a. And herein the printed book of Statutes erreth, for here the Parliament begun not.

22 E. 3. Sir William Thorpe Chief Justice.

a 17 E. 3. nu. 7, 8. Sir Bart. de Burghersh.

25 E. 3. nu. 16.

27 E. 3. nu. 2.

28 E. 3. nu. 1.

29 E. 3. nu. 8.

Sir William Shyball Chief Just.

45 E. 3. nu. 8.

Sir Robert Thorpe Chief Justice.

47 E. 3. nu. 2.

Sir Jo. Knivet Chief Justice.

50 E. 3. nu. 2. Sir Jo. Knivet Chief Justice. 51 E. 3. nu. 13. by Sir Robert Ashton the Kings Chamberlain. b Parl. 36 E. 3. nu. 1. Simon Langham B. of Ely Chancellor. c And so it was done ever after. 5 R. 2. nu. 2. The causes of Parliament were in ancient time shewed in the Chamber de peint, or St. Edwards Chamber. d Parl. 27 E. 3. nu. 2.

King may appoint any other: as many times the Chief Justice of England, and sometimes a some other, as may appear in the Parliament Rolls, only one I will transcribe.

b At this day Sir Henry Green the Kings Chief Justice (although the Lord Chancellor were present) in the presence of the King, the Lords and Commons, declared the causes of the Parliament c in English, viz. for redress of matters touching the Church, for observation of the peace, for the affairs of Scotland, for the enhancing the price of Wool, &c. d But at the next meeting Simon Langham Bishop of Ely shewed the causes of Parliament, and in the end, he did in the Kings name require the Commons to make choice of a learned and discreet man to be their Speaker: and when a Bishop was Lord Chancellor, he took a Text of Scripture which he repeated in Latin, and discoursed upon the same. But when a Judge was Lord Chancellor, he took no Text, but in manner of an Oration shewed summarily the causes of the Parliament.

The Election of the Speaker.

It is true, the Commons are to chuse their Speaker: but seeing that after their choise the King may refuse him, for avoiding expence of time and contestation, the use is (as in the Conge de eslier of a Bishop) that the King doth name a discreet and learned man whom the Commons Elect: but without their Election no Speaker can be appointed for them, because he is their mouth, and trusted by them, and so necessary, as the House of Commons cannot sit without him: and therefore a grievous sickness is a good cause to remove him, as in 1 H. 4. John Chenye Speaker chosen and allowed, was for sickness, so as he could not serve, discharged, and Sir John Doreward chosen in his place: and so was William Sturton, after he was chosen and allowed Speaker, removed for grievous sickness, and Sir John Doreward chosen in his place. At the Parliament holden in 15 H. 6. Sir John Tirrell Knight was chosen and allowed Speaker, and for grievous sickness removed, and William Beerly Esq; chosen in his place, &c.

But sickness is no cause to remove any Knight, Citizen or Burgess of the House of Commons: So note a diversity between the Speaker and any other of the House of Commons; and this diversity being not observed begat an error by some opinion in 38 H. 8. cit. Parliament Brook 7. for continual experience is to the contrary.

The Presentment of the Speaker.

When the Commons have chosen their Speaker, the person elected standing in his place, disabling himself to undergo so weighty a charge, as in his discretion he thinks fit, desires them to proceed to a new choise: which being denied, and he set in the Chair, then he prayeth them to give him leave that he may disable himself to the King: after this they present him to the King in the Lords House; where after he hath disabled himself to speak before the King, and for the whole body of the Realm, and made humble suit to the King, lest by his insufficiency the business of the Realm may be hindered to be discharged, and a more sufficient man to be chosen: if he be allowed by his Majesty, then he maketh a Protestation consisting on three parts: First, that the Commons in this Parliament may have free Speech, as of right and by custom they have used, and all their ancient and just privileges and liberties allowed to them. Secondly, that in any thing he shall deliver in the name of the Commons (if he shall commit any error) no fault may be attributed to the Commons, and that he may resort again to the Commons for declaration of their true intent, and that his error may be pardoned. The third is, that as often as necessity for his Majesties service, and the good of the Commonwealth shall require, he may by the direction of the House of Commons have access to his Royal Person.

This

Sickness cause to remove the Speaker.

1 H. 4. nu. 62, 63.

Rot. Parl. 1 H. 5.

nu. 9, 10, 11.

Rot. Parl. 15 H. 6.

nu. 10. & 27.

Sickness no cause to remove a Member of the House of Commons.

38 H. 8. Parl. Br. 7.

What the Speaker shall do when he is chosen.

The King may allow of his excuse, and disallow him, as Sir John Popham was.

28 H. 6. nu. 6.

The Protestation of the Speaker.

This is in the Parliament Rolls called a Protestation in respect of the first part, the nature whereof is to be an exclusion of a conclusion, and herein that the House of Commons be not concluded to speak only of those things which the King or Lord Chancellor, &c. hath delivered to them to be the causes of the calling of this Court of Parliament, but in a Parliamentary course of all other arduous and urgent business, which principally consist in these five Branches, as it appeareth in the Writs of Summons to the Lords Spiritual and Temporal, viz.

The matters of Parliament.

1. Touching the King. 2. The state of the Kingdom of England. 3. The defence of the Kingdom. 4. * The state of the Church of England: and 5. The defence of the same Church. And this appeareth by express words in the Parliament Writ in these words: Pro quibusdam arduis urgentibus negotiis, nos, statum, & defensionem Regni nostri Angliæ, & Ecclesiæ Anglicanæ concernentibus quoddam Parlamentum nostrum, &c. teneri ordinavimus, &c. And these words [the state and defence of the Kingdom] are large words, and include the rest. And though the state and defence of the Church of England be last named in the Writ, yet is it first in intencion, as it appeareth by the title of every Parliament: As for example, a To the honour of God and of holy Church, and quietness of the people, &c.

Now for as much as divers Laws and Statutes have been enacted and provided for these ends aforesaid, and that divers mischiefs in particular, and divers grievances in general concerning the honour and safety of the King, the state and defence of the Kingdom and of the Church of England might be prevented, an excellent Law was made Anno 36 E. 3. which being applied to the said Writs of Parliament doth in few and effectual words set down the true subject of a Parliament in these words. For the maintenance of the said Articles and Statutes, and redress of divers mischiefs and grievances which daily happen, a Parliament shall be holden every year, as another time was ordained by a * Statute.

Before the Conquest Parliaments were to be holden twice every year, Celebrimus autem ex omni satrapia bis quotannis Conventus agitur. King E. i. kept a Parliament once every two years for the most part, and now it is enacted, that a Parliament shall be holden once every year.

The Romans vanquished our Ancestors, the ancient Britains, for that they assembled not, they consulted not in common with them, nor Common Councils, as Tacitus in vita Agricolaë saith, Nec aliud adversus validissimas gentes pro nobis utilius, quam quod in * commune non consulunt. Rarus ad propulsandum commune periculum conventus: Ita dum singuli pugnant, universi vincuntur. But to return to the matters of Parliament.

And it is enacted and declared by Authority of Parliament in Anno 4 H. 8. That all suits, accusations, condemnations, executions, fines, amerciements, punishments, corrections, charges, and impositions at any time from thenceforth to be put, or had upon any member, either of that present Parliament, or at any Parliament at any time after that Act to be holden, for any Bill, * speaking, reasoning, or declaring of any matter or matters concerning the Parliament, to be communed, or treated of, be utterly void and of none effect. Which latter branch is general. Now what matter or matters concern the Parliament appear before. And this clause of the Act of 4 H. 8. is declaratory of the ancient Law and custom of the Parliament.

And this doth not only appear by the Writs directed to the Lords of Parliament, but by the Writs for election of the Commons. For example, The Writ to the Sheriff of Norfolk for election of the Knights, Citizens, and Burgeses within that County is, Rex Vicecomiti Norff. Salutem. Quia nos de avisamento & assensu concilii nostri pro quibusdam arduis & urgentibus negotiis, nos, statum, & defensionem Regni nostri Angliæ, & Ecclesiæ Anglicanæ concernentibus quoddam

Rot. Par. i R. 2. nu. 15, &c. Rot. Par. 2 H. 4. n. 8. Sir Arnold Savage Speaker. 5 H. 4. n. 8. 7 H. 4. nu. 11. Sir John Tibotot Speaker, & ibid. nu. 30. 1 H. 5. n. 7. 2 H. 5. n. 10. And so in succeeding times called a Protestation.

Rot. Par. 9 H. 4. An Act intituled Indemnity de Seigniors & Commons, not printed.

* See W. 1. An. 3 E. 1. in the Preamble, the state of the Realm, and of holy Church. And the 2. part of the Inflicite, W. 1. c. 1. & in the Preamble * 36 E. 3. 50 E. 3. &c.

36 E. 3. c. 10. Parliaments ought to be holden once in a year.

* 4 E. 3. cap. 14. Int. leges Edgar cap. 5.

Tacitus in vita Agricolaë, p. 306. * Nota, Commune concilium. Conventus.

4 H. 8. c. 8.

* Neq; timida probitas, neque improba fortitudo Republicæ est utilis.

The like Writ to all the other Counties, saving in Wales they have but one Knight and one Burges.

a Nota, ad faciendum & consentiendum.

And every City two Citizens, and out of every Burgh two Burgesles.

b Nota, super negotiis antedictis.

dam Parliamentum nostrum apud. &c. teneri ordinaverimus, & ibidem cum Prælati, magnatibus, & proceribus dicti Regni nostri colloquium habere & tractatum: ipsi Vicecom. Norff. præcipimus firmiter injungend^o, quod facta proclamatione in proximo comitatu tuo post receptionem ejusdem brevis, duos milites gladiis cinctos, &c. eligi faceret, &c. *a* ad faciendum & consentiendum hiis quæ tunc ibidem de communi concilio nostro Angliæ (favente Deo) contingerent ordinari *b* super negotiis antedictis, ita quod pro defectu potestatis hujusmodi, seu propter improvidam electionem Militum, Civium & Burgensium prædict^o dicta negotia nostra infecta non remanerent quovismodo. And this power extendeth equally to all Knights, Citizens and Burgesles of Parliament.

What the Speaker shall do after his allowance.

After the Commons with their Speaker are come from the Lords house, and that the Speaker is set in the Chair, then he desireth the Commons, that seeing they have chosen him for their mouth, that they would favourably assist him in their arduous and important affairs: and that he will do them the best service he can with all diligence and faithful readiness, or to the like effect.

The Writs of Summons of Parliament, which are to be found in the close Roll from time to time.

Seeing the Summons of Parliament (as hath been said) is by the Kings Writs, which tend to the beginning of the Parliament, it shall be necessary to speak somewhat of those Writs. And it is to be observed, that the substance of those Writs ought to continue in their original essence without any alteration, or addition, unless it be by Act of Parliament. For * if original Writs at the Common Law can receive no alteration or addition but by Act of Parliament, a multo fortiori, the Writs for the Summons of the highest Court of Parliament can receive no alteration, or addition, but by Act of Parliament. Where *c* the Writs of Summons issued out of the Chancery, and were returnable in the Court of Parliament, the return thereof could not be altered, and returnable into the Chancery, but by Act of Parliament. And because the words of the Writ for election of Knights, &c. were, *d* duos milites gladiis cinctos, &c. it required an Act of Parliament, that notable Esquires might be eligible.

* Brañ. l. 5. f. 413.
Britton 122, 227.
Fleta l. 2. cap. 12.

W. 2. c. 15. 1. part
of the Inst. § 101.
Epist. ad librum.

c 7 H. 4. c. 25. Rot.
Par. § R. 2. n. 1, 2,
&c. they be now
returned into the
Chancery, and

kept in the office
of the Clerk of the
Crown there.

d 23 H. 6. cap. 15.
Parl. 6 H. 3. This
was called *indol-*

sum Parliamentum
lack-learning Par-
liament. Rot. Par.

46 E. 3. n. 13. 5 R.
2. c. 4. 7 H. 4. c. 15.

See hereafter
more of this mat-
ter, in this Chap.
p. and who be
eligible, &c.

* Nota. W. 1. c. 5,
3 E. 1.

Walsingham saith, that in Anno Domini 1404. which was anno 6 H. 4. in the Writs of the Summons of Parliament, there was added by the King a commandment in the Writ, that no Lawyer should be returned Knight or Burgesle, (but the Historian is deceived, for there is no such clause in those Writs, but it was wrought by the Kings Letters by pretext of an Ordinance in the Lords House, in 46 E. 3.) But at the next Parliament in 7 H. 4. at the grievous complaint of the Commons, being interrupted of their free election by those letters (which were Letters of Justice and right) it is, amongst other things, enacted, That elections *e* should be freely, and indifferently made, notwithstanding any prayer, or commandment to the contrary, i. sine prece, by any prayer or gift, & sine præcepto, without commandment of the King by Writ, or otherwise, or of any other; which was a close, and prudent salve, not only for that soze, but for all other in like case, and it is but an Act declaratory of the ancient Law and custom of Parliament.

Petitions in Parliament.

On the first day of the Parliament, after the Commons be departed to choose their Speaker, then are certain Justices Assistants and Civilians Masters of the Chancery Attendants, viz. four Justices, and two Attendants appointed

appointed to be receivers of the Petitions of England, Ireland, Wales, and Scotland, and that those that will deliver their Petitions, are to deliver them within six days following. At that time there are other Justices and Civilians attendants, viz. three Justices and two Attendants appointed to be receivers of Petitions for Gascoign and other * places beyond the Seas, and of the Isles, and that they deliver their Petitions within six days, &c.

Receivers of Petitions of England, Ireland, Wales, Scotland.

* Gascoign, Guyard, Poyters, Normandy, Anjou, &c.

Then are appointed of the Nobility Lords of Parliament and Bishops, viz. Six of the Nobility, and two Bishops, to be triers of the said Petitions for England, Ireland, Wales, and Scotland, they together or four of the Prelates and Lords aforesaid, calling to them the Kings learned Council, attendants in Parliament when need should be, and to sit in the Chamber of the Treasury. The like appointment of the Nobility and Bishops to be triers of the Petitions for Gascoign, and other places beyond the Seas, and of the Isles, and a place appointed for their sitting, calling to them the Kings learned Council when need should be. For Petitions to be preferred into the Lords House in Parliament for the Countreies and places aforesaid, this was the ancient constant Law, and custom of the Parliament continued until this day. Wherein these three things are to be observed: First, The extent of the Jurisdiction of the Parliament of England. Secondly, That for expediting of causes, there should be receivers of all Petitions, both of Judges of the Realm for their knowledge in the Laws of the Realm, and of Civilians attendants, who might prepare and inform the triers, being Lords of Parliament, of the quality of those Petitions. Thirdly, That there should be of the Lords Spiritual and Temporal triers of those Petitions, to try out whether they were reasonable, and good and necessary to be offered and propounded to the Lords.

Triers of Petitions.

Of Petitions in Parliament some be of Right, some of Grace, and some mixt of both: Some preferred by the Lords Spiritual, some by the Lords Temporal, some by the Commons, some by the Lords and Commons. Extra Parlamentum nulla petitio est grata, licet necessaria; In Parlamento nulla petitio est ingrata, si necessaria. *a* All Petitions ought to contain convenient certainty and particularity, so as a direct answer may be given to them.

a Rot. Par. 18 E. 1 f. 3. & 16. 50 E. 3. n. 125. 60 E. 1. 17 E. 3. n. 55. 56. 36 E. 3. n. 35. 43 E. 3. n. 19. 45 E. 3. n. 33. 47 E. 3. n. 16. 1 R. 2. n. 132. &c.

b Petitions being timely preferred (though very many) have been answered by the Law and custom of Parliament before the end of the Parliament. This appeareth by the ancient Treatise, De modo tenendi Parlamentum, &c. in these words faithfully translated in a fair and ancient Manuscript, for Bills and Petitions. The Parliament ought not to be ended while any Petition dependeth undiscussed, or at the least, to which a determinate answer is not made.

b Rot. Par. 17 E. 3. n. 60. 29 E. 3. n. 60. 50 E. 3. 212 1 R. 2. 134 &c. 2 R. 2. n. 38. 1 H. 4. 132 2 H. 4. 3. 25. 3 H. 4. 113 23 E. 3. n. 42. 25 E. 3. n. 12. 36 E. 3. n. 31. 50 E. 3. n. 52. 60 E. 3. cap. 10. 18 E. 3. cap. 1. 4. 50 E. 3. n. 17. Lions case. Rot. Par. 1 H. 5. n. 17. 13 H. 4. n. 9. 11 H. 4. cap. 9. * Innovations and Novelties. *d* 36 E. 3. Rot. 19. &c.

And in the Parliament Rolls, there is a Title towards the end of the Parliament, The Petition of the Commons, &c. with their answer entered and recorded in the Roll of Parliament. *c* And one of the principal ends of calling of Parliaments is for the redress of the mischiefs and grievances that daily happen. * Innovations and Novelties (sometime termed in Rolls of Parliament Novelties) in Parliamentary proceedings are most dangerous, and to be refused. *d* And sometime the King doth answer the Petition of the Commons by the assent of the Prelates, Counts, Barons, and Commons themselves: such unity hath been for the common good in Parliaments in former times.

Appointment of Committees of Grievances, &c.

The Commons being the general Inquisitors of the Realm, have principal care in the beginning of the Parliament to appoint days of Committees, viz. of grievances (both in the Church and Commonwealth) of

e Bracton. Gravus est eternam quam temporalem

lædere majestatem. And it appeareth by the Statute of 36 E. 3. cap. 10. That it is one of the principal ends of the Parliament, to redress grievances. And the words of the Writ of Parliament be *De arduis & urgentibus negotiis, statum & defensionem Ecclesie Anglicane concernentibus.*

Courtes

Courts of Justice, of privileges, and of advancement of trade. These Committees when they meet, they elect one of them to sit in the Chair in likeness of the Speaker: the Committee may examine and vote the questions handled by them, and by one, whom they appoint, report their resolution to the House, and the House, sitting the Speaker, to determine the same by question.

Absents, Proxies.

21 E. 4. 50. The ancient Record, De modo tenendi Parl. &c. vers. finem, optime.

Any Lord of the Parliament by license of the King upon just cause to be absent, may make a Proxy: and in the bundle of Proxies Anno 5 H. 5. it appeareth, that in those days a Spiritual Lord of Parliament might have made his Proxy to the Procurators of the Clergy, or to any other Clerk, but at this day he cannot make it but to a Lord of Parliament: but a Knight, Citizen, or Burgess of the House of Commons cannot by any means make any Proxy, because he is elected and trusted by multitudes of people.

Of the ancient Treatise called Modus tenendi Parliamentum.

See the second part of the Instit. Mag. Car. c. 2 p. 7. 8 See the first part of the Institutes, Sect. 164. fol. 110. See the second part Instit. p. 8 the Charter of King H. 1. at his Coronation having relation to Modus tenendi Parl. See also the Chronicle of King John anno 17 Matth. Par. 246. per antiquum relevium, viz. hæres comitis pro comite integro 100 l. hæres Baronis pro Baronia integra 100 marc. & hæres militis de feodo militis integro. 5 l. See Mag. Car. c. 2. * It is justly called antiquum relevium, because it is according to the proportion of this ancient Modus.

Now for Antiquity and Authority of the ancient Treatise called Modus tenendi Parliamentum, &c. whereof we make often use in this part of the Institutes; certain it is, that this Modus was rehearsed and declared before the Conqueror at the time of his Conquest, and by him approved for England, and accordingly the Conqueror according to Modus held a Parliament for England, as it appeareth in 21 E. 3. f. 60.

After King H. 2. had conquered Ireland, he fitted and transcribed this Modus into Ireland, in a parchment Roll, for the holding of Parliaments there, which no doubt H. 2. did by advice of his Judges, being a matter of so great weight and legal. This Modus in the parchment Roll transcribed as aforesaid by H. 2. remained in Ireland, and in anno 6 H. 4. was in the custody of Sir Christopher Preston Knight, a man of great wisdom and learning, which Roll King H. 4. in the same year, De assensu Johannis Talbot Chivalier his Lieutenant there, and of his Council of Ireland, exemplified for the better holding of the Parliaments there; and in the exemplification it expressly appeareth that H. 2. did transcribe this Modus, as is aforesaid.

This Modus was seen by the makers of the Statute of Magna Carta, Anno 9 H. 3. cap. 2. concerning the reducing of the * ancient reliefs of entire Barons, Baronies, and Knights fees according to such proportions as is contained in the Modus, which they could not have done so punctually, if they had not seen the same, whereof you may read more at large in the First part of the Institutes, Sect. 103. fol. 76. Verbo Relief. And some part of this Modus is cited in the Parliament Roll, Anno 11 R. 2. and other Records of Parliament, and upon diligent search we can find nothing against it. But many very ancient copies you may find of this Modus, one whereof we have seen in the Reign of Hen. 2. which containeth the manner, form and usage of Gilbert de Scrogele Marshal of England, in what manner he occupied and used the said room and office in all his time, and how he was admitted, &c. at the Coronation of H. 2. and of his Knight Marshal, and other inferior officers, &c. and adjoined thereunto, and of the same hand is this Modus, as fit for him to know.

But lest it might be said to me, as it was once said to an Orator, who having spoken much in commendation of Hercules: It was demanded of one that stood by, Quis vituperavit? Ad quod non fuit responsum. But now let us return to Proxies.

At the Parliament holden An. 1 Eliz.

A Lord of Parliament by license obtained of the Queen to be absent, made a Proxy to three Lords of Parliament, Conjunctim & divisim dans eis potestatem tractandi, tractatibusque auxilium & consilium impendendi, atque statutis & ordinationibus, quæ inactitat' contigerint, consentiendi. Ita quod non sit melior conditio occupantis. And one of the Procurators gave consent to a Bill, and the

the two others said, not content. And first it was by order of the Lords debated amongst the Judges and Civilians attendants, and conceived by them that this was no voice, and the opinion was affirmed by all the Lords of Parliament *seriatim*. Another question was moved at that time, that if a Lord of Parliament make a Provy, and after come into the Lords House of Parliament, and sit there without arguing, consenting or speaking any thing; and it was conceived by the Judges and Civilians, that his sitting there without saying any thing was a reboication in Law of his Provy; à Fortiori, if he moved or spake to any matter there propounded, and their opinion was resolved by the Lords *seriatim*. And these were the proxies of the Bishop of Bathe, the Lord Howard Chamberlain, and of the Lord Windfor.

King John in the 13 year of his Reign being in extream fear of both the Pope and the French King, and especially of his own Subjects (and what is fear, saith Solomon, but a betraying of the succours that reason offereth?) sent Ambassadors to Admiralus Marmelinus great Emperour of Turkey, Sir Thomas Herrington and Sir Ralph Nicholson Knights, and Sir Robert of London Clerk, nuntios suos secretissimos, to offer to be of his Religion, and to make his Kingdom Tributary to him, and he and his Subjects to be his Vassals, and to hold his Kingdom of him. But that Infidel great Prince, as a thing unworthy of a King, to deny his Religion, and betray his Kingdom, utterly refused to accept. King John in the 14 year (the next year) of his Reign by his Charter 15 May, by the threats and perswasion of the Popes Commissary Pandulphus surrendered his Kingdoms of England and Ireland to Pope Innocent the Third, cum communi consilio Baronum, (as he inserted therein) and that thence forward he would hold his Crown as feodary to the Pope, paying for both his Kingdoms 1000 marks. Whereupon doing homage and fealty to the Pope by the hand of Pandulphus, and taking off the Crown from his Head surrendered it to the Pope by Pandulphus, at whole feet he laid also the Royal Ensigns, his Scepter, Sword and Ring; all which was afterward accepted, approved and ratified by the Pope, by his Bull which was called *Bulla aurea*.

Gregorius Papa petiit à Rege E. I. per literas annum censum 1000 merc. Rex respondet se sine prelatibus & proceribus regni non posse respondere, & quod Jurejurando in Coronatione sua fuit astrictus, quod jura regni sui servaret illibata, nec aliquid quod Diadema tangat regni ejusdem absque ipsorum requirit consilio faceret.

In anno 40 E. 3. the Pope by his Ambassadors demanded of the King homage for the Kingdom of England and Land of Ireland, and the arrearages of 1000 marks by the year, granted by King John to Pope Innocent the Third and his Successors, and threatened that if it were not paid, the Pope was resolved to proceed against the King. Whereupon the King in the same year calleth his Court of Parliament, and in the beginning of that Parliament (saith the Record) Fuit monstre a les Prelates, Dukes, Countes, Barons, les Chivaliers des Counties, Citizens & Burgeses en le presence le Roy per le Chancellor, coment ils avoient entendue les causes del summons del Parliament en general, mes la volonte le Roy fuist que les causes feussent monstres a eux en especial: lour disoit coment le Roy avoit entendue que le Pape per force dun fait quel il dit que le Roy Johan fesoit au Pape de luy faire homage pur le Realme d'Engleterre & la terre d'Ireland, & que per cause du dit homage quil luy devoit payer chescun an perpetuellement mille marcs, est en volonte de faire proces devers le Roy & son Roialm pur le dit service & cens recoverir; de quoi le Roy pria as dits Prelats, Dukes, Countes & Barons lour avys & bon conseil, & ce quil enferroit, en case que le Pape vorroit proceder devers luy, ou son dit Roialme per celle cause: & les Prelats requeroient au Roy quilz se purroient per eux soul aviser & respondre lendemain, queux Prelatz le dit lendemain adeprimmes per eux mesmes, & puis les autres Dukes, Countes, Barons & Gentz respondirent & disoient, que le dit Roy Johan ne nul autre purra mettre luy, ne son Roialme, ne son people

Lib.Sap.17.12.
Mat.Par.pa.233:

Rot.Cl.An. 3 E.1
m.9. in Scheda:

Rot.Par. 40 E.3.
nu.8: An Ad ne-
ver yet printed.

I have thought
good to transcribe
it in proprio Idio-
mate.

No King can put himself nor his Realm, nor his people, in such subjection without assent of the Lords and Commons in Parliament, and therefore if King John had done it by the Common Council of his Barons, as his Charter purported, yet it bound not, for that it was not done in Parliament by the King, the Lords and Commons: and albeit it might (as here it appeareth, it cannot be done without Authority of Parliament) yet it is *Contra legem & consuetudinem Parliamenti*, to do such a thing, as by the next Record in 42 E.3. appeareth.

* Ro. Par. 42 E. 3. nu. 7. *Lex & consuetudo Parliamenti*

en ticle subjection sanz assent & accorde deux: & les communes sur ce demandez & avisez respondirent en mesme le manere; sur qui feust ordeine, & assentu per commune assent en manere quensuyt. En se present Parlement tenuz a Westm Lundy prochein apres la invention de la Sainte Croice lan du Reign le Roy Edward quarantisme, tant sur l'estat de Sainte Eglise, come des droitz de son Roialm & de la Corone maintenir, entre autres choses estoient monstrez coment ad este parlee, & dit que le Pape per force dun fait quele il dit que le Roy Johan, jadis Roy d'Engleterre fesoit au Pape au perpetuite de luy faire homage pur le Roialme d'Engleterre & la terre de Irland, & per cause du dite homage de luy rendre un Annuel rent: ad este en volonte de faire processe devers le Roy pur les ditz services & ceus recoverir; la quele chose monstree as Prelats, Ducs, Countes, Barons, & la commune pur ent avoir lour avys & bon conseil, & demandee de eux ce que le Roy enferra en case que le Pape vorroit proceder ou rien attemper devers luy ou son Roialme per celle cause? Queux Prelats, Ducs, Countes, Barons communes en sur ce plein deliberation responderont & disoient d'une accorde, que le dit Roy Johan ne nul autre purra mettre luy ne son Roialme ne son peuple en tiel subjection sanz assent de eux, & come piert per plusieurs evidences, que si ce feust fait, ce feust fait sanz leur assent, & encontre son serement en sa Coronation: Et outre ce les Ducs, Countes, Barons, Gents & Communes accorderent & granterent que en case que le Pape se afforceroit ou rien attemperoit per proces, ou en auter manere de fait de constreindre le Roy ou ses Subjects de per fair ce quest dit qu'il voet clamer telle partie quils resifront & contresterront ove toute leur puissance.

This Noble and prudent King took the fairest and surest way to give satisfaction, whereof the Pope being certified, the matter ever since hath rested in quiet.

* It is declared by the Lords and Commons in full Parliament, upon demand made of them on the behalf of the King, that they could not assent to any thing in Parliament that tended to the dissension of the King and his Crown, whereunto they were sworn. See hereafter in the case of Ireland.

Lex & Consuetudo Parliamenti.

7 E.2. Stat. De defensione portand. arma.

2 E.3. ca. 3.

Rot. Par. 6 E. 3.

nu. 1. 13 E. 3.

nu. 2. 14 E. 3. nu. 2.

15 E. 3. nu. 2.

17 E. 3. nu. 3.

18 E. 3. nu. 2.

20 E. 3. nu. 1.

25 E. 3. Stat. 1.

nu. 58. 25 E. 3.

Stat. 2. nu. 5. &c.

Privy Coat or

Armour.

Games or Plays.

Rot. Par. Anno

13 E. 3. nu. 5. & 8.

* See hereafter pa.

By the ancient Law and Custom of the Parliament a Proclamation ought to be made in Westminster in the beginning of the Parliament, that no man upon pain to lose all that he hath, should during the Parliament in London, Westminster, or the Suburbs, &c. wear any privy coat of Plate, or go armed, or that Games or other Plays of men, women, or children, or any other pastimes or strange shews should be there used during the Parliament: and the reason hereof was, that the High Court of Parliament should not thereby be disturbed, nor the Members thereof (which are to attend the arduous and urgent business of the Church and Commonwealth) should not be withdrawn.

* It is also the Law and Custom of the Parliament, that when any new device is moved on the Kings behalf, in Parliament for his aid, or the like, the Commons may answer, that they tendred the Kings estate, and are ready to aid the same, only in this new device they dare not agree without conference with their Countries, whereby it appeareth, that such conference is warrantable by the Law and Custom of Parliament.

And it is to be observed, though one be chosen for one particular County or Borough, yet when he is returned, and sits in Parliament, he serveth for the whole Realm, for the end of his coming thither, as in the Writ of his Election appeareth, is general, ad faciendum & consentiendum hiis quæ tunc & ibidem de communi consilio dicti regni nostri (favente Deo) contigerint ordinarii super negotiis prædictis. i. pro quibusdam arduis & urgentibus negotiis nos, statum, & defensionem regni nostri Angliæ & Ecclesiæ Anglicanæ concernentibus, which are rehearsed before in the Writ.

Lex & consuetudo Parliamenti.

And

And as every Court of Justice hath Laws and Customs for its direction, some by the Common Law, some by the Civil and Cannon Law, some by peculiar Laws and Customs, &c. So the High Court of Parliament Suis propriis legibus & consuetudinibus subsistit. It is * Lex & Consuetudo Parliamenti, that all weighty matters in any Parliament moved concerning the Peers of the Realm, or Commons in Parliament assembled, ought to be determined, adjudged and discussed by the course of the Parliament, and not by the Civil Law, nor yet by the Common Laws of this Realm used in more inferiour Courts; which was so declared to be secundum legem & consuetudinem Parliamenti, concerning the Peers of the Realm, by the King and all the Lords Spiritual and Temporal; and the like pari ratione is for the Commons for any thing moved or done in the House of Commons: and the rather, for that by another Law and Custom of Parliament, the King cannot take notice of any thing said or done in the House of Commons, but by the report of the House of Commons: and every Member of the Parliament hath a judicial place, and can be no witness. And this is the reason that Judges ought not to give any opinion of a matter of Parliament, because it is not to be decided by the Common Laws, but secundum legem & consuetudinem Parliamenti: and so the Judges in divers Parliaments have confessed. And some hold, that every offence committed in any Court punishable by that Court, must be punished (proceeding criminally) in the same Court, or in some higher, and not in any inferiour Court, and the Court of Parliament hath no higher.

Upon his Petition exhibited to the King, wherein the question was, whether the power which he had raised was High Treason, &c. which Petition (saith the King) let be delivered to the Justices by them to be considered. Whereupon the Lords made protestation, that the order thereof belonged to them, which was to them allowed, and they resolved it to be no Treason.

And because we have a case in 3 E. 3. 19. concerning the Law and Custom of Parliament, we have thought good to set down the Record of that case de verbo in verbum, and then to examine the report of the said Case, and the Opinion there delivered, wherein we shall desire the learned to consider well the Statute of 5 R. 2. Stat. 2. cap. 4. and thereupon to consider what (as that Statute speaketh) hath been done of old times, &c. And how that Act saith done, and not said.

Johannes Episcopus Winton in misericordia pro pluribus defaultis. Idem Johannes Episcopus attachiat fuit ad respond' Domino Regi, de eo quare cum in Parlamento Regis apud novam Sarum nuper tent' per ipsum Dominum Regem inhibitu fuisse, ne quis ad dictum Parliamentum sommonitus ab eodem recederet sine licenc' Regis: Idem Episcopus durante Parlamento predict. ab eodem sine licentia Regis recessit in Regis contemptum manifestum, & contra inhibitionem Regis supradictam. Et unde idem Dominus Rex per Adam de Fincham, qui sequitur pro eo, dicit, quod predictus Johannes Episcopus fecit ei transgress. & contemptum predict. &c. in contempt. Regis mille librarum. Et hoc offert verificare pro Domino Rege, &c.

Et predictus Episcopus in propria persona sua venit, & defendit omnem contemptum & transgress. & quicquid, &c. et dicit, quod ipse est unus de paribus regni, & Prelatus sacros. Ecclesie, & eis inest venire ad Parliamentum Domini Regis per summonitionem &

Ista lex ab omnibus est quærenda, à multis ignorata, à paucis cognita. Fleta lib. 2. cap. 2.

* Rot. Par. 11 R. 2. nu. 7.

See the first part of the Institutes. Sect. 3. Verb. En la Ley.

Rot. Par. 2 H. 4. nu. 11.

Rot. Par. 3 H. 6.

In le Countee de Marshals case.

Rot. Par. 27 H. 6.

nu. 18. the Earl of Arundels case.

Rot. Par. 31 H. 6. nu. 26, 27, 28. Baron Thorps case.

5 H. 4. nu. 22.

The Earl of Northumberland's case

Vid. Rot. Par.

9 H. 4. Indemnity des Seigniors & Commons.

Pasch. 3 E. 3. coram Rege Rot. 9. in Dorset. South. Nora, that this was by Writ Original.

The Declaration.

The Plea of the Bishop to the Jurisdiction of the Court.

* Nota hoc.

This is the allegation of the Kings Attorney.

The B. maintains his former plea to the Jurisdiction.

pro voluntate ipsius Domini Regis cum sibi placuerit. * Et dicit, quod si quis eorum deliquerit erga Dominum Regem in Parlamento aliquo, in Parlamento debet corrigi & emendari, & non alibi in minor Cur. quam in Parlamento: per quod non intendit, quod Dominus Rex velit in cur. hic de huiusmodi transgr. & contempt. factis in Parlamento responderi, &c. Et super hoc datus est eis dies coram Rege a die Sanctæ Trin. in quindecim dies ubicunque, &c. salvis rationibus. Ad quem diem præd. Episcopus venit in propria persona sua, & datus est ei dies coram Domino Rege a die Sancti Mich. in 15 dies ubicunque, &c. in eodem statu quo nunc, &c. salvis rationibus suis, &c. Ad quem diem venit prædict. Adam qui sequitur, &c. Et similiter prædictus Episcopus in propria persona sua. Et prædictus Adam pro prædicto Domino Rege dicit, quod cum placeat ei Parliamentum suum tenere pro utilitate regni sui de regali potestate sua facit illud summoneri ubi & quando, &c. pro voluntate sua, & etiam facit prohiberi existentibus tunc ad Parliamentum, ne quis eorum abinde recedat contra prohibitionem suam, &c. absq; licentia, &c. Et si quis eorum abinde recedat contra prohibitionem, &c. in contempt. Regis, &c. bene liceat ipsi Domino Regi sumere sectam erga huiusmodi delinquentes in qua curia placeat sibi, &c. Et ex quo Dominus Rex pro voluntate sua Parliamentum sua tenet, &c. petit iudicium pro ipso Domino Rege, si idem Dominus Rex duci debeat, seu compelli ad proseguend' in hac parte alibi contra voluntatem suam, &c.

Et prædictus Episcopus dicit ut prius, quod cum aliquis deliquerit in Parlamento, ibidem debet corrigi & emendari, &c. & licet aliquis summonitus esset veniendi ad Parliamentum, & non venisset ibidem, debet puniri, per quod non intendit, quod Dominus Rex velit alibi responderi quam in Parlamento, &c. Et super hoc datus est eis dies usque in Cra. Animarum ubicunque, &c. in eodem statu quo nunc, &c. Ad quem diem venit tam prædict. Adam, qui sequitur pro Domino Rege, quam prædict. Episcopus in propria persona sua. Et datus est dies coram Domino Rege in Octab. Sancti Hillarii ubicunque, &c. salvis rationibus suis, &c. Ad quem diem prædict. Episcopus venit, & datus est ei dies ulterius coram Domino Rege in Octab. Pur. beatæ Mariæ ubicunq; &c. Ad quem diem venit tam prædictus Episcopus, quam Johannes de Lincoln' qui sequitur pro Domino Rege, & datus est eis dies ulterius coram Domino Rege a die Paschæ in quinque septimanas ubicunq; &c. Salvis rationibus, &c. Ad quem diem venit tam præd. Episcopus in propria persona sua, quam prædict. Johannes de Lincoln' qui sequitur pro dicto Domino Rege, &c. Et datus est eis dies ulterius a die Sancti Michaelis in 15 dies ubicunq; &c. salvis sibi rationibus suis hinc in dicend', &c.

And

And this is all that is in the Record, whereby it appeareth that the plea of the Bishop to the Jurisdiction of the Court after divers days given did stand, and was never over ruled agreeably to the said resolutions in former times, that Judges were not to determine matters concerning the Parliament, as is aforesaid. Touching the report of the said case, thus far forth it agreeth, that this contempt cannot be punished in any other Court then in the Kings Bench: so as the question is only for that Court. It appeareth that the reporter never saw the said Record, only took it by the ear of that which was spoken in Court (a dangerous kind of reporting, and subject to many mistakings, for seldom or never the right case is put) as in this case it fell out. For first, where the Record saith, that the Parliament was holden at Sarum, the report is of a Parliament holden at Salop. 2. The Report saith, that John Bishop of Winchester was arraigned, which implieth that he was indicted, &c. where he was sued by original Writ. 3. The Inhibition made by the King alledged in the Record, is not in the Report. 4. Concerning the sudden opinion of Scrope in this Report: By his opinion the Parliament itself could not have punished this contempt; for he saith, *Ceux q̄ sont Judges de Parliament, sont Judges de leur Piers, mes le Roy n'ad my pier in son terre demesne, pur q̄ il ne poet p eux estre Judge, donque aïlors que cy ne poet estre Judge*, whereas without question the Parliament might have punished this contempt: and concludeth with a rule at the Common Law, that the King may sue in what Court it pleaseeth him. But matters of Parliament (as hath been often said) are not to be ruled by the Common Law: and it seemeth that the rest of the Judges were against Scrope, for the plea was never over-ruled, as by the Record it appeareth.

Vide per Indictamenta Termino Paschæ 1 & 2 Ph. & Mar. coram Rege Rot. 48. Informations preferred by the Attorney General against 39 of the House of Commons for departing without license contrary to the Kings Inhibition in the beginning of the Parliament; whereof six being timorous Burgesses ad redimendam vexationem submitted themselves to their Fines, but whether they paid any or very small, we have not yet found. And *Edmond Plowden the learned Lawyer pleaded, that he remained continually from the beginning to the end of the Parliament, and took a Travers full of pregnancy: and after his plea was sine die per demise le Roign.

Mich. 3 & 4 Ph.
& Mar. Rot. 36,
inter Plac. Regis
& Reginz.

If offences done in Parliament might have been punished elsewhere, it shall be intended that at some time it would have been put in ure. Vid. the first part of the Institutes. Sect. 108.

Now the said Informations Anno 1 & 2 Ph. & Mar. against 39 of the House of Commons follow in these words. Pasch. 1 & 2 Phil. & Mar. Regis & Regine.

Midd. ss. **M**emorand' quod Edwardus Griffyn arm' Attornat' Domini Regis & Reginae generalis, qui pro eisdem Dominino Rege & Domina Regina sequitur, venit hic in Cur' dictorum Dominorum Regis & Reginae coram ipsis Rege & Regina apud Westmonast. die Sabbathi proximo post quind' Pasch. isto eodem Termino, & dat Cur' hic intelligi & informari. Quod cum ad Parliamentum Dominorum Regis & Reginae nunc tent' apud Westmonast. Annis Regnorum suorum primo & secundo inhibitu fuit per ipsos Dominum Regem & Dominam Reginam in eodem Parlamento, quod nullus ad idem Parliament' summonitus, & ibidem interessens, ab eodem Parlamento absque speciali licentia dictorum Dominorum Regis & Reginae, & Cur' Parliament' prædict' recederet, seu seipsum aliquo modo absentaret. Quidam tamen Thomas Denton de in com' Oxon. arm' Henricus Cary

Inhibitu factu

Cary de *in com.* gent' Richardus Warde de
in com. arm' Edmund. Plowden de Tybmershe *in com.* Berks
 armiger, Henricus Chiverton de *in com.* armig. Robertus
 Browne de *in com.* Johannes Courke de
in com. Johannes Pethebrige de *in com.*
 Johannes Melhewes de *in com.* Courtney de
in com. Radulphus Michel de *in com.*
 Thomas Mathew de *in com.* Richardus Brassey de
in com. Thomas Massye de *in com.*
 armig. Petrus Frechwell de *in com.* miles. Hen-
 ricus Vernon de Sydbery *in com.* Derby armig. Willielmus Moore
 de villa Derb. *in com.* Derby gen. Willielmus Banibrigge
 de *in com.* Johannes Eveleigh de *in com.*
 gen. Nicholas Adams de Dartmouth, alias Clifton Har-
 nys *in com.* Devon gen. Richardus Phelipps de *in com.*
 arm. Anthonius Dylvington de *in com.*
 Andreas Hore de *in com.* Christopherus Hoell de
in com. Dorf gen. Johannes Mannocke de *in com.*
 gen. Thomas Phelipps de *in com.* Johan-
 nes Hamond de *in com.* Johannes Phelipps de
in com. Willielmus Randall junior, de
in com. Johannes Moyne de *in com.*
 Hugo Smyth de *in com.* gen. Rogerus Gerrard de
in com. gen. Radulphus Scroope de
in com. gen. Thomas Moore de Hambled. *in com.* Buck, gen.
 Willielmus Reade de *in com.* arm. Henricus
 Mannock de *in com.* arm. Johannes Maynard de
 Villa Sancti Albani, *in com.* Hertf. arm. Nicholas Debden de
in com. gen. & Philippus Tirwhyte de *in com.*
 arm. qui summoniti fuerunt ad dictum Parlamentum, & in eodem
 Parlamento comparuerunt, ac ibidem interfuerunt mandat. & inhibi-
 tionem Dominorum Regis & Reginae supradicti parvi pendentis, ac
 statum Reipublicae hujus Regni Angliae minime curantes aut ponde-
 rantes postea scil. 12 die Januarii Annis Regnorum dictorum Domini-
 norum Regis & Reginae nunc primo & secundo supradictis, & durante
 Parlamento predicto ab eodem Parlamento sine licentia dictorum Domi-
 norum Regis & Reginae & cur. suae predictae contemptuose receperunt
 in ipsorum Dominorum Regis & Reginae ac mandat. & inhibitionis suo-
 rum predictae curiaeque predictae contempt. manifestum, ac in magnum
 Reipublicae statum hujus Regni Angliae detrimentum, nec non in pernicio-
 sum exemplum omnium aliorum, &c. Unde idem Attornatus Domini-
 norum Regis & Reginae petit advisamentum cur. in praemissis & debit. le-
 gis process. vers. eosdem Thomam Denton, Henricum Cary, Ri-
 chardum Warde, Edmond Plowden, Henricum Chiverton, Rober-
 tum Browne, Johannem Courk, Johannem Pethybridge, Johannem
 Melhewes, Johannem Courtney, Radulph. Michell, Thomam Ma-
 thewe, Richardum Brassey, Thomam Massye, Petrum Frechwell,
 Henricum Vernon, Will. Moore, Will. Banibrigge, Johannem Eve-
 leigh,

Mandatum & In-
hibitionem.

leigh, Nichol. Adams, Richardum Phelipps, Anthonium Dilvington, Andream Hoorde, Christopherum Hoell, Johannem Mannock, Thomam Phelipps, Johannem Hamon, Johannem Philipps, Willielmum Randall, Johannem Moyne, Hugonem Smith, Rogerum Gerard, Radulphum Scroope, Thom. Moore, Willielm. Read, Henricum Mannock, Johannem Maynard, Nicholaum Debden, & Philip Tyrwhytt fieri ad respondend. Domino Regi, & Domina Regina de contempt. prædict. &c.

Et modo scil. die Veneris proxim. post Crastin. animarum isto eodem Termino coram Domin. Rege & Domina Regina apud Westmonast. ven. prædict. Edm. Plowden per Andream Tusser Attornatum suum: & habit. audit. Informationis prædictæ dic', quod ipse non intendit quod Dominus Rex & Domina Regina nunc ipsum Edmund' pro præmissis vel aliquo præmissorum impetere seu occasionare velint aut debent: Quia dicit quod ipse ad dict. Parliament. informatione prædict. specificat. interfuit & præsens fuit, ac in eodem Parlamento continue remansit, viz. a principio ipsius Parliamenti usque ad finem ejusdem. Absque hoc quod ipse idem Edmund Plowden dicto 12 die Januarii, Anno primo & secundo supradict. durant. Parliament. prædict. ab eodem Parliament. sine licentia dictorum Dominorum Regis & Regina, & cur. sue prædict. contemptuose recessit in ipsorum Dominorum Regis & Regina ac mandat. & inhibitionis suorum prædict. curiaque prædict. contempt. manifest. ac in magnum Reipublicæ stat. hujus Regni Angliæ detriment. nec non in perniciosum exemplum omnium aliorum modo & forma prout per informac. prædict. vers. eum supponitur. Et hoc paratus est verificare prout cur. &c. unde pet. judicium: & quod ipse de præmiss. per cur. hic dimitatur, &c.

Mic. 3 & 4 Phil. & Mar. Rot. 36. inter plac. Regis & Regina.

Nota, The pregnancy of this travers. Sine die per demise le Royne.

Midd. **V**E. fac. Thomam Constable de Grimbsbye in com. Lincoln. Arm. Henr. Leigh, de in com. Francis. Farnham de Querne in com. Leicest. arm. Li. lo. Michael. 2 & 3 Phil. Regis & Mar. Regina. Johannes Holcroft, Sen. de in com. milit. Williel. Brombley de in com. arm. Thom. Somerset de in com. arm. Georg. Ferrers de Markyat. in com. Hertf. gen. Nichol. Powtrell de Exinton in com. Notting. arm. F. Hillar. 3 & 4 Phil. & Mar. Tho. Moyle de in com. Kanc. milit. Thom. Waters de in com. arm. Williel. Tylcok de civit. Oxon. gen. Li. lo. Hillar. 2 & 3 Phil. & Mar. Thom. Balkden de Wechyngleigh in com. Surr. milit. Li. lo. Mich. 2 & 3 Phil. & Mar. Matth. Cradock de villa Staff. gen. Li. lo. Hillar. 2 & 3 Phil. & Mar. Georgium Lye de villa Salop. gen. Cess. process. per mandat. Attornat. Dominorum Regis & Regina, quia ulterius prosequi non vult vers. ipsum Georg. Lye. Johann. Hoord de Bridgenorth in com. Salop. gen. F. Mich. 5 & 6 Phil. & Mar. Johann. Alsop de villa de Ludlowe in com. Salop. gen. Williel. Laurence de Civ. Winton. gen. Li. lo. Mich. 2 & 3 Phil. & Mar. Robert. Hudson de Civ. Winton. gen. Li. lo. ut antea. Edmon. Rowse de Donwich in com. Suff. mil. Robert. Coppinge de Donwich.

Per de annis 1 & 2 Ph. & Mar. Rot. 48.

in com. Suff. arm. Johannem Harman de Hospicio Domin. Regis & Domin. Reginae gen. Willielm. Crowch de Wellowe in com. Somersf. arm. Thom. Lewes de villa de Wels in com. Somersf. gen. Li. lo. Hillar. 2 & 3 Phil. & Mar. Willielm. Godwyn de Wels predict. in com. Somersf. gen. F. Mich. 3 & 4 Phil. & Mar. Johannem Ashburnham de Ashburnham in com. Suff. arm. Li. lo. Michael. 2 & 3 Phil. & Mar. Walt. Reynceum de Civ. Cicest. in Com. Suff. gen. Li. lo. Trin. 2 & 3 Phil. & Mar. Will. Moodyere de Slindon in com. Suff. gen. F. Trin. 4 & Phil. & Mar. Joh. Roberts de in com. Suff. gen. utlegat. &c. Will. Pellet de Steininge in com. Suff. gen. F. Pasch. 2 & 3 Phil. & Mar. Rich. Bowyer de Arundell in com. Suff. gen. Li. lo. Mich. 3 & 4 Phil. & Mar. Williel. Dandby de in com. Westmerl. gen. Robert. Griffyth de Civ. Novæ Sarum in com. Wilts, Draper. Li. lo. ut supra. Johan. Hooper de Civ. Novæ Sarum in com. Wilts, gen. Li. lo. Mich. 2 & 3 Phil. & Mar. Will. Clark de in com. Grif. Curtys de Bradstock in com. Wilts gen. Li. lo. ut supra, &c. Thom. Hil. de Denyses in com. Wilts gen. F. Hillar. 2 & 3 Phil. & Mar. Edw. Umpton de London gen. Li. lo. Michael. 2 & 3 Phil. & Mar. Thom. Parker de in com. Johan. Reade de London gen. F. Hillar. 2 & 3 Phil. & Mar. Arth. Allen de Civ. Bristol, Merch. Egid. Payne de Civ. Bristol, Gen. Williel. Hampshire de London, Gen. Li. lo. Michael. 3 & 4 Phil. & Mar. & Pet. Tayler de Malbrow in com. Wilts, Taylor. Li. lo. Michael. 3 & 4 Phil. & Mar. Resp. Regi de quibusdam transgress. & contempt. unde impetit sunt.

Cess. process. vers.
Georgium Lyc.
Sine die per de-
mise le Royne.

Per cont. Rott. de
Annis 1 & 2 Ph. &
Mar. Rot. 48.

Midd. **V**E. fac. cr. Trin. Edw. Braxden de civ. Wigorn. gen. Georg. Newport de Droitwich in com. Wigorn. gen. Wil. Wigstone de Wolstone in com. War. mil. Li. lo. Mic. 2 & 3 Ph. & Mar. Radulph. Browne de Woodlowes in com. War. gen. Li. lo. Mic. 3 & 4 Ph. & Mar. Joh. Harforde de civ. Covent. gen. Cess. process. &c. Nic. Frythe de in com. Ric. Rayleton de in com. Marc. Wyrley de civ. Lichfield, gen. Walt. Jobson de villa de Kingston super Hull. Jac. Brenne de in com. gen. Joh. Payton de in com. Kanc. ar. Joh. Cheney de in com. Kanc. ar. Will. Oxenden de in com. Kanc. ar. Th. Keys de in com. Kanc. gen. Wil. Hannington de in com. Kanc. Joh. Tyffars de in com. Nic. Crypse de in com. Kanc. ar. Ed. Herbert de Stawley in com. Salop. ar. F. Hil. 4 & 5 pred. Ph. & Mar. &c. Ric. Lloyde de in com. Kanc. gen. Joh. de Knylle de in com. ar. H. Jones de in com. mil. Meredith Gaines de in com. gen. & Ric. Bulkeley de in com. mil. Resp. Regi de quibusdam transgr. & contempt. unde impetit. sunt. Et postea, scil. Termino sanct. Trin. Annis 4 & 5 P. & Ma. pro eo quod sufficienter hic in cur. testatum est quod predict. Joh. Harford habuit licentiam recedere a Parlamento, &c. Ideo Edw. Griffyn ar. Attornat. Dominorum Regis & Reginae generalis qui pro ipsis Rege & Regina in hac parte sequitur, dicit quod ipse ulterius in hac parte vers. præfatum Johan. Harford prosequi non vult. Ideo cess. hic process. vers. enim omnino, &c.

Non prof. vers.
Harford tantum.

Sine die per de-
mise le Royne.

And

And to deal clearly, this is all that we can find concerning this matter. Thus you may observe, that the poor Commons, Members of the Parliament, in diebus illis, had no great joy to continue in Parliament, but departed. But now to proceed.

Of Writs of Error in Parliament.

If a Judgment be given in the Kings Bench, either upon a Writ of Error, or otherwise, the party grieved may upon a Petition of Right made to the King in English, or in French (which is not ex debito Iustitiæ, but for decency, for that the former Judgment was given Coram Rege) and his answer thereunto, hat Iustitia, have a Writ of Error directed to the Chief Justice of the Kings Bench for removing of the Record in præsens Parlamentum, and thereupon the Roll it self, and a transcript in Parchment is to be brought by the Chief Justice of the Kings Bench into the Lords House in Parliament: and after the transcript is examined by the Court with the Record, the Chief Justice carrieth back the Record it self into the Kings Bench, and then the Plaintiff is to assign the Errors, and thereupon to have a Scire facias against the adverse party, returnable either in that Parliament, or the next; and the proceeding thereupon shall be super tenorem recordi, & non super recordum. All this, and many more excellent matters of Learning are contained in the Records following; whereof a light touch is hereafter given, the Records at large being too long here to be rehearsed. And the proceeding upon the Writ of Error is only before the Lords in the Upper House, Secundum legem & consuetudinem Parliamenti.

Queritur Guilielmus de Valencia contra Concilium regis, i. Iustic' Coram Rege, pro injusto iudicio tangen' allocationem Dionisie filie Guilielmi de monte Caniso ut hæred': sed Dominus Rex ratum habet eorum factum, & iudicium redditum est contra Guilielmum de Valencia.

If a Nobleman had been erroneously attainted of Treason, &c. he might have had his Writ of Error in Parliament, notwithstanding the Statute of 33 H. 8. ca. 20. for that must be intended of lawful records of Attainder: but if the Attainder be established by Authority of Parliament, then he must exhibit his Petition in Parliament to be restored of grace. But now by the Statute of 29 El. ca. 2. it is ordained, that no Record of Attainder of High Treason that then was, for the which the party attainted had been executed for the same Treason should be reversed for error: but this extendeth only to Attainders of High Treason, and not to any Attainder of High Treason after that Act, nor to any High Treason before for the which the party was not executed.

The Prior and Covent of Montague by their Petition declared, that Richard Seymour had obtained an erroneous Judgment against the said Prior in the Kings Bench, upon a Judgment given in the Common Pleas upon a fine for the Mannor of Titenhull in the County of Somerset, &c. And the principal Error was for denying of aid of the King where it was grantable, and that hanging a Writ of Right, the said Richard sued a Scire facias. And commandment was given to the Chancelor of England, that he should make a Writ of possession and seison to be had, and other process upon that Judgment to be made: In this Record you shall observe excellent pleading.

Error in Parliament upon a Judgment in an Appeal of death upon an acquittal of the Defendant, and inquiry of the Abettors, &c.

And (that we may observe it once for all) when one sueth in Parliament to reverse a Judgment in the Kings Bench, he sheweth in his Bill which he exhibiteth to the Parliament some Error or Errors, whereupon he prayeth a Scire facias.

The Bishop of Norwich sheweth that an erroneous Judgment was given against him in the Common Pleas for the Archdeaconry of Norwich belonging to his Presentation, and prayed that those Errors might be heard and redressed there:

The House of the Lords is a distinct Court for many purposes.
22 E. 3. fo. 3.
Regist. 17. Lib.
Intr. Raft. 284.

Rot. Par. Post festum Sancti Hil. Anno 18 E. 1.
Rot. 8.
Rot. Par. 4 E. 3. nu. 13. Rich. Earl of Arundels case. Ib. 28 E. 3. nu. 11, 21. Mortimer Earl of Marches case.
See Pasch. 28 E. 3. Coram Rege Rot. 37. Wigorn. the same case.
33 H. 8. ca. 20.
29 Eliz. ca. 2.
Rot. Par. 7 R. 2. nu. 20. 8 R. 2. nu. 14.

Rot. Par. 13 R. 2. nu. 15. Sir Thomas Methams case

Rot. Par. 50 E. 3. nu. 48.

there: whereunto answer was made, that Errors, by the Law, in the Common Pleas are to be corrected in the Kings Bench, and of the Kings Bench in the Parliament, and not otherwise.

1 R. 2. nu. 28, 29. 2 R. 2. nu. 31. A Writ of Error in Parliament between William Mountacute Earl of Sarum, and Roger of Mortimer Earl of March of a Judgment in the Kings Bench.

a The Dean and Chapter of Lichfield recovered in the Common Pleas against the Prior of Newport Pannel: the Prior by Writ of Error reversed the Judgment in the Kings Bench: the Dean and Chapter by Writ of Error in Parliament reversed the Judgment in the Kings Bench, and affirmeth the Judgment in the Common Pleas, and a commandment given to the Chancellor, that the Judgment in the Common Pleas be executed by process by him to be made.

b John Sheppy complains of a Judgment in the Kings Bench in a Writ of Error.

c Error in Parliament between William Mountacute Earl of Salisbury, and Roger de Mortimer Earl of March, for the Castle, Town, and Honour of Denbeigh, &c. upon a Judgment given in the Kings Bench, and had a Scire facias returnable the next Parliament.

d William Seward alias Cheddre complaineth, that where he by that name was presented and inducted to the Parsonage of Wotton Under Egge in the County of Glouc^r, and thereof continued the possession by the space of four years, until the King by untrue suggestion presented Sir John Dawtry to the Parsonage of Underhegge in that County, where there was no such Parsonage called Underhegge, as the said William pleaded in a Quare Impedit brought by the King in the Kings Bench; upon which Writ the King recovered by the default the Parsonage of Underhegge, and not Under Egge, whereby upon a Writ sent to the Bishop of Worcester, the said William was put from his Parsonage of Under Egge: for which mistaking and Error, the Judgment for the said John in full Parliament was reversed, and a Writ awarded to the said Bishop for the restitution of the said William.

The Record and Judgment given in the Kings Bench for the King, against Edmond Basset for certain Lands, &c. was for divers Errors reversed in Parliament, and restitution of the premises with the mean profits restored to the said Edmond.

In Error in Parliament between Roger Deyncourt, and Ralph de Adderlye for a Judgment given in the Kings Bench for the Pannor of Anlye in Com^r War. Sir William Gascoign Chief Justice delivered a Copy of the Record and Process, word for word, under his hand, &c. to the Clerk of the Parliament, &c.

In Error in Parliament between Richard Quatermayns and William Hore, &c. upon an erroneous Judgment given in the Kings Bench in an Action of Trespass, and the Plaintiff entered his Attorney of Record to proceed therein.

John Beauchamp Lord Abergavenny complained in Parliament upon an erroneous Judgment given upon a verdict in the Kings Bench in a Scire facias upon a Recognisance in the Chancery for the keeping of the Peace. In the Record whereof are excellent points of learning, as well touching the Recognisance, as the Process and Issue.

Error in Parliament, Pasch. 31 H. 6. upon a Judgment given in an Assise in the Kings Bench, & intratur super marginem, Rot. mittitur in Parliamentum per Johannem Fortescue Termino Pasche anno 31 H. 6.

And to omit many others, to descend to some of later times, Richard Whalley recovered in Assise by verdict against divers tenants, who brought a Writ of Error in the Kings Bench, where the Judgment in the Assise was affirmed, the Tenant complained in Parliament for Error in the Kings Bench.

Error in Parliament upon complaint of Sir Christopher Heydon Knight of a Judgment in a Writ of Error in the Kings Bench between the said Sir Christopher Plaintiff, and Roger Godsalve and others Defendants, upon a Judgment

a Ro. Parl. 15 R. 2. nu. 23. & 18 R. 2. nu. 11, 12, 13, 14, 15. This Parliament of 18 R. 2. is not mentioned in the printed book, because no Act passed at this Parliament. See 2 H. 4. nu. 40.

b Ro. Parl. 15 R. 2. nu. 22.
c 21 R. 2. nu. 25.
2 H. 4. nu. 13.

d Rot. Parl. 1 H. 4. nu. 91.

Rot. Parl. 15 R. 2. nu. 24. & 2 H. 4. nu. 48.

5 H. 4. nu. 40.

Rot. Parl. 3 H. 5. nu. 19.

Rot. Parl. 10 H. 6. nu. 51. & 11 H. 6. nu. 40.

Rot. Parl. 31 H. 6.

Rot. Parl. 23 El. Dier 23 El. f. 373.

Rot. Parl. 12 Jac.

ment given for the said Roger, &c. against the said Sir Christopher in an Assise before Justices of Assise, wherein the Judgment in the Assise was affirmed in the Kings Bench, whereof the complaint was made, sed non prevaluit.

A Peer of the Realm being indicted of Treason or Felony, or misprision of Treason, may be arraigned thereof in Parliament, a Lord Steward being appointed, and then the Lords Spiritual shall make a Procurator for them; and the Lords, as Peers of the Realm, during the Parliament are Judges, whether the offence be Treason, &c. that is supposed to be committed by any Peer of the Realm, and not the Justices, as it appeareth in the Earl of Northumberlands case, Rot. Parl. 5 H. 4. nu. 11, 12. See in the Parliament holden 21 R. 2. sub titulo Pl. Coronæ, in a Roll annexed, &c. before the Steward of England and other Lords Temporal, Richard Earl of Arundels case. Rot. Parl. 31 H. 6. nu. 49. Thomas Earl of Devon was arraigned of High Treason before Humphrey Duke of Buck' Steward of England hac vice, and was acquitted by his Peers, 10 E. 4. fo. 6. b. Stanf. Pl. Coron. 153. b.

In case of Treason, &c. the Lords Spiritual make their Proctors. The Peers are Judges of Treason, &c. during the Parliament, &c. Rot. Parl. 5 H. 4. nu. 11, 12. Rot. Parl. 21 R. 2. sub tit. Plac. Coronæ, &c. Rot. Parl. 31 H. 6. nu. 49.

Of Judicature.

Now order doth require to treat of other matters of Judicature in the Lords House, and of matters of Judicature in the House of Commons. And it is to be known, that the Lords in their House have power of Judicature, and the Commons in their House have power of Judicature, and * both Houses together have power of Judicature: but the handling hereof according to the worth and weight of the matter would require a whole Treatise of it self; and to say the truth, it is best understood by reading the Judgments and Records of Parliament at large, and the Journals of the House of the Lords, and the book of the Clerk of the House of Commons, which is a Record, as it is affirmed by Act of Parliament in anno 6 H. 8. ca. 16.

* Vide Placita in Parliam. Anno 33 E. 1. Rot. 33. Nicholaus Segrave adjudge per Prelatos, Comites, Barones & alios de concilio.

At the Parliament at York anno 12 E. 2. *Consideratum est per Prelatos, Comites, Barones, & Communitatem Angliæ.* The Lord Awdelyes case. At the Parl. at Westm' 15 E. 2. Hugh le pier adjudge per les Seignours & Commons. Rot. Parl. 42 E. 3. nu. 20. Sir John at Lee adjudged by the Lords and Commons. Rot. Parl. 50 E. 3. 2. parte, A pardon to the Lord Latimer of a Judgment in Parliament. Rot. Parl. 50 E. 3. nu. 34. Lo. Nevils case.

See Rot. Claus. 1 R. 2. m. 5. 8. 38, 39. A trefage Councel le Roy, les Seigniors & Commons, &c. Rot. Parl. 1 H. 4. nu. 79. It is no Act of Parliament, but an Ordinance, and therefore bindeth not in succession. Rot. Parl. 2 H. 5. nu. 13. Error assigned that the Lords gave Judgment without petition or assent of the Commons. Rot. Parl. 28 H. 6. nu. 19. and many others in the reign of King H. 6. King E. 4.

And of later times, see divers notable Judgments, at the prosecution of the Commons, by the Lords at the Parliaments holden 18 and 21 Jac. Regis, against Sir Giles Mompeffon, Sir John Michel, Viscount S. Albone Lord Chancellor of England, the Earl of M. Lord Treasurer of England, whereby the due proceeding of Judicature in such cases doth appear.

Thomas Long gave the Mayor of Westbury four pound to be elected Burgesse, who thereupon was elected. This matter was examined and adjudged in the House of Commons, Secundum legem & consuetudinem Parliamenti, and the Mayor fined and imprisoned, and Long removed: for this corrupt dealing was to poison the very fountain it self.

In the book of the House of Commons at the Parliament holden 8 Eliz. Ownsloe Speaker. fo. 10. 23 El. ib. f. 14 Popham Atturney general Spéaker.

Arthur Hall a Member of the House of Commons for publishing and discovering the conferences of the House, and writing a Book to the dishonour of the House, was upon due examination, Secundum legem & consuetudinem Parliamenti, adjudged by the House of Commons to be committed to the Tower for six months, fined at five hundred marks, and expelled the House.

Munckton stroke William Johnson a Burgesse of B. returned into the Chancery of Record, for which upon due examination in the House of Commons, it was resolved that secundum legem & consuetudinem Parliamenti, every man must take notice of all the Members of the House returned of Record at his

ib. 2 Aprilis. 1 Mariæ. Vid. 11 H. 6. c. 11. 5 H. 4. ca. 6.

See Rot. Parl.
8 H.6.nu.57.

peril; but otherwise it is of the servant of any of the Members of the House; for there he that striketh, &c. must have notice. And the House adjudged Muncion to the Tower, &c.

If any Lord of Parliament, Spiritual or Temporal, have committed any oppression, bribery, extortion, or the like, the House of Commons being the general Inquisitors of the Realm, (coming out of all the parts thereof) may examine the same, and if they find by the Vote of the House, the charge to be true, then they transmit the same to the Lords with the witnesses and proofs.

Privilege of Parliament.

Vide inter leges
Edw. Confess. c. 3.

And now after Judicature, let us speak somewhat of privilege of Parliament: Experience hath made the privileges of Parliaments well known to Parliament men, yet will we speak somewhat thereof.

Petitions coram
Domino Rege ad
Parliament' post
festum Sancti
Mich. Anno 18
E.1.fo.7.

Magister militie Templi petit quod distringat (catalla unius de concilio) tempore Parliamenti pro reditu unius domus in London: Rex respondet, non videtur honestum, quod illi de concilio suo distringantur tempore Parliamenti, sed alio tempore, &c. Whereby it appeareth that a Member of the Parliament shall have privilege of Parliament, not only for his servants, as is aforesaid, but for his horses, &c. or other goods distrainable.

Plac' coram Rege
& ejus concilio
ad Parliam. suum
post Festum San-
cti Hil. Anno
18 E.1. fol. 1.
Vide Inf. 10 E. 3.
more hercof con-
cerning serving of
a Citation.

Querela Comitis Cornubiæ, versus Bogonem de Clare & Priorem Sanctæ Trinitatis London, quod ipsi tempore Parliamenti ipsum comitem in medio aula Westm ad procuracionem ipsius Bogonis citaverunt, quod compareret coram Archiepiscopo Cantuar, &c. Ipse Prior venit & Bogo similiter, & ponunt se in gratiam, misericordiam, & voluntatem Regis de alto & basso, ob quod mandatur turri London: Postea venit dictus Bogo & finem fecit domino regi pro prædicta transgressione per duas mille marcas, &c. & quoad prædict' Comitem respondeat Comiti 1000 li. pro transgressione sibi fact', &c. & prædictus Prior mittitur ibidem ad faciend' secundum quod Thesaurarius ei dicet ex parte dñi Regis.

And yet the serving of the said citation did not arrest, or restrain his body, and the same privilege holdeth in case of Subpoena, or other process out of any Court of Equity.

Rot. Parliam.
Anno 8 E.2. in
Dorset. cl. 8 E.2.

Rex mandavit Justiciariis suis ad Assisas, Jurat', &c. capiend' assignat' quod supersedeant captioni eorundem ubi Comites, Barones & alii summoniti ad Parliamentum Regis sunt partes, quamdiu dictum Parliam. duraverit.

Ibid. m. 33 & 22.

De non procedendo ad capiend' Assisas versus illos, qui ad Parliamentum Regis apud Eborum venerunt.

In Scacc' ex Ori-
ginali de Anno
10 E.3. Ro. 27. No.
* That is, in
Court of Parlia-
ment.

Rex omnibus ballivis & fidelibus suis ad quos, &c. Salutem. Sciatis quod cum curiæ nostræ in quibus * negotia regni nostri dedicantur ubiq; adeo liberæ sint & exemptæ, & à tempore quo non extat memoria liberæ & exemptæ fuerunt, quod nec aliqua forum Ecclesiasticum concernentia in eisdem curiis nostris fieri seu exequi, nec aliqui easdem curias nostras ad aliqua forum Ecclesiasticum contingencia faciendum vel exequendum ingredi debeant, vel consueverunt aliquibus temporibus retroactis, ac Magister Henricus de Harewedon Clericus, Edmundus de Lukenore & Johannes de Wedlingburgh de eo quod ipsi nuper in Cancellaria nostra in præsentia venerabilis Patris I. Cantuariensis Archiepiscopi Cancellarii nostri quasdam citationes sive monitiones dilecto clerico nostro Johanni de Thoresby, nec non provocaciones, appellationes & instrumenta publica super citationibus seu monitionibus prædictis in nostri contemptum & Coronæ nostræ ac Regiæ dignitatis nostræ præjudicium, & contra libertatem & exemptionem prædict' fecerunt per inquisitionem in quam se inde in curia nostra coram dilecto Cancellario nostro & aliis de concilio nostro posuerunt convicti fuissent & ea occasione prisonæ nostræ mancipati in eadem ad voluntatem nostram moraturi. Nos de gratia nostra speciali ad requisitionem Philippæ Reginæ Angliæ consortis nostræ charissimæ perdonavimus eisdem Henrico, Edmundo & Johanni imprisonment prædictum; Ita tamen quod nobis satisfaciant de redemptione sua occasione præmissorum, & quod super citationibus, monitionibus, provocacionibus

Citationes.
This John de
Thoresby was
then Clerk of the
Parliament.

bus, appellationibus seu instrumentis prædictis in dicta cancellaria nostra sic factis processum aliquem non faciant, nec quicquam quod in nostri vel juris coronæ nostræ præjudicium cedere possit attemptent vel attemptare faciant de cætero quovis modo. In cujus, &c. Teste Rege apud Turrim London 15 die Aprilis, ex originali de Anno 10 E.3. Rot. 27. Not.

* Privilege of Parliament in informations for the King, generally the privilege of Parliament do hold, unless it be in these cases, viz. Treason, Felony, and the Peace.

* Rot. Parl. An. 17 E.4. n.36. Vid. 21 E.4. fol.38.39. Rot. Parl. Anno 8 H.6. nu.57. Vide infra, p.

Of Statutes or Acts of Parliament.

There is no Act of Parliament but must have the consent of the Lords, the Commons and the Royal assent of the King, and as it appeareth by *a* Records and our *b* Books whatsoever passeth in Parliament by this threefold consent, hath the force of an Act of Parliament.

The difference between an Act of Parliament, and an Ordinance in Parliament, is, for that the *c* Ordinance wanteth the threefold consent, and is ordained by one or two of them.

92. *c* Rot. Parl. 25 E.3. nu.16. &c. 39 E.3.12. 22 E.3.3. 8 H.6. cap.29. Dier 4 Mar. 144. 39 E.3.7. Thorp male erravit. Rot. Parl. 37 E.3. nu.39. 1 R.2. nu. 56. diversity between Acts of Parliament and Ordinances. 2 R.2. Stat. nu. 28.

d I have read of a restitution in blood, and of lands of one Will. de Lasenby by the King, by the assent of the Lords Spiritual, and Commons, (omitting the Lords Temporal) this we hold is an Ordinance, and no Act of Parliament. And when the Clergy is omitted and the Act made by the King, the Lords Temporal, and Commons. See the Rolls of Parliament and authorities following, viz. Rot. Parl. Pasch. 15 E.2. the case of the Spencers. 3 R.2. cap.3. in print. Our Sovereign Lord by the common consent of all the Lords Temporal, and at the petition of the Commons, &c. 7 R.2. cap.12. accord. 11 R.2. n.9.10.11. See 1 H.5. c.7. f.21 R.2. n.9 & 10. 6 H.6. n.27. 7 H.8. Kelw. 184. the opinion of the Justices agreeable with the said Acts of Parliament. And note the mutability in this particular case of the Spencers, of this High Court of Parliament. The judgment by Parliament in 15 E.2. against the Spencers was in the same year by Act of Parliament repealed: that repeal was repealed by authority of Parliament in 1 E.3. that repeal of 1 E.3. was repealed by Act of Parliament in 21 R.2. and that of 21 R.2. was repealed by authority of Parliament in 1 H.4. And so the judgment against the Spencers standeth in force.

a Vid. 14 R.2. n.13 & 13 H.4. n.25. *b* 4 H.7.18. b. per tours les Justices. 7 H.7. 14 & 16. 11 H.7.27. a. Book prerogative 134. Fortescue fol.20. *c* 18. Dier 1 Mar.

d 13 H.4. nu. 20.

e Repeal 1 E.3. c.2 Stat. 1. 15 E.3. tit. Petition. F. 2. See Rot. Pat. An. 1 H.4. part. 5. m.36. the Isle of Man given to the King by the Lords Temporal and Commons.

/ Repeal. 1 H.4. c.3

The division of Acts of Parliament.

Of Acts of Parliament some be introductory of a new Law, and some be declaratory of the ancient Law, and some be of both kinds by addition of greater penalties or the like. Again, of Acts of Parliament, some be general, and some be private and particular. All Acts of Parliament relate to the first day of Parliament, if it be not otherwise provided by the Act.

33 H.6. fol.17.

The several forms of Acts of Parliament.

In ancient time all Acts of Parliament were in form of Petitions. And for the several forms of Acts of Parliament, see the Princes case in the 8 Book of Reports. Now for the reading, committing, amending, ingrossing, voting, and passing of Bills in either House, and touching conferences with the Lords, and for the privilege of any Member of either Houses, and of their servants more then hath been said, they be so ordinary and well known, and in such continual practice, as it were but expence of time to treat any more of them. And for that many times the Rolls of the Parliament have not been truly ingrossed, at the

Dier. 3 Mar. 131. lib.8. fo. 1. the Princes case. Concerning the ingrossing in Rolls of Acts of Parliament. Rot. Parl. 7 H.4. nu. 69.

the request of the Commons certain of them are to be appointed, who should be at the ingrossing of the Rolls of Parliament.

In former times Acts of Parliament were proclaimed by the Sheriffs.

When I read the case of *Premunire* in 39 E.3. upon the Statute of 27 E.3. of *Provisors* against the Bishop of Chichester, and observing that Serjeant Cavendish of counsel with the Bishop objected two things: First, That the Act whereupon the Writ was grounded, was no Statute. Secondly, That if it were a Statute, it was never published in the County: whom Sir Robert Thorpe Chief Justice answered. Although proclamation be not made in the County, every one is bound to take notice of that which is done in Parliament; for as soon as the Parliament hath concluded any thing, the Law intends, that every person hath notice thereof, for the Parliament represents the Body of the whole Realm: and therefore it is not requisite that any Proclamation be made, seeing the Statute took effect before. This gave me to understand, that albeit it was not required by Law that Statutes should be published in the County; yet seeing in those days and long after, the use of Printing came not into this Realm; the use was (as it appeareth by Cavendishes speech) that they should be published in the County, to the end that the Subjects might have express notice thereof, and not to be overtaken by an intendment in Law, which gave me occasion to search and inquire how this usage was, and how long it continued. And in the end I found, that at every Parliament the Acts that passed were transcribed into Parchment, and by the Kings Writ directed to the Sheriff of every County of England, and commandment given to him, that all the said Statutes in all places through his whole Bailiwick, as well within Franchise as without, where he should find most fit, that he not only should proclaim them, but to see that they should be firmly observed and kept. And the usage was to proclaim them at his County Court, &c. and there to keep the transcript of the Acts, that who so would, might read or take copies thereof. And this Writ was sometime in Latin and sometime in French, as in those days the Statutes were enacted in Latin or in French. But an example of the one, and of the other will more illustrate this matter.

John Moore.
Printing was invented in Meath in Germany, Anno Domini 1441. and came to us in the Reign of H. 6. See Bodin de Methodo historiarum, l. 7. una Typographia cum omnibus omnium veterum inventis certare facile potest. Polydorus Virgil. de invent. rerum lib. 2. cap. 7. Cardan. de varietate rerum l. 3. c. 64.

At the Parliament in An. 10 E. 3.

* Nota, That the Sheriff that hath Custodiam Comitatus, should see the Statutes within his County to be kept. At the Parliament An. 1 R. 2.

Edwardus Dei grat Rex Angliæ & Franciæ, & Dominus Hiberniæ Vic. Norff. Salut. Quædam statuta p nos, Prælatos, Comites, Barones, & alios magnates ad Parlamentum nostrum tentum apud Eborum in Cra. Ascensionis ultim præterit ordinavimus & stabilivimus, prout sequitur, and recite the several Statutes verbatim. And then the Writ concludeth, Et ideo tibi præcipimus, quod statuta illa & omnes articulos in eisdem contentos in singulis locis in baliva tua, tam infra libertates, quam extra, ubi expedire videris, publice proclamari & * firmiter teneri & observari facias. Teste, &c.

Richard p la grace de Dieu Roy Dengleterre & de France, & Seignieur d Ireland a nostre Viscount de Norff. Salut. Saches que al honeur de Dieu, & reverence de Saint Esglise & pur nurrer peace, unitie, & concord in tous parts deins nostre Realme, le quel nous desirons mult entirement, del assent des Prelats, Dukes, Counts & Barons de mesme nostre Realme, al instance & special request des Communs de nostre Realme assemblees a nostre Parliament tenus a Westm. a la quinzim de S. Michael lan de nostre Reigne premier avons fait ordeiner & stablier certaine statuts en amendement & relievement de mesme nostre Realme, & en la forme que sensuist. Primerment est assentus & establie, que Saint Esglise eit & enjoyce tous les droitures, &c. rehearsing all the Statutes that passed at that Parliament. And the Writ concludeth thus, Et pur ceo vous mandons que tous les Statuts faces crier & publier, & firmament tener p my vostre Baillic solong la forme & tenor de icel, & ceo ne lesses en aucun manner. Done p testmoignants de nostre grand seale al Westm. le premier jour de Feverer lan de nostre Reigne primer. And the like Writs continued until the beginning of the Reign of H. 7. long time after printing within the Reign of H. 6. (as hath bin said) came unto us.

Proroga-

Prorogation, Adjournment, Continuance, and what maketh a Session of Parliament.

The passing of any Bill or Bills by giving the Royal assent thereunto, or the giving any judgment in Parliament doth not make a Session, but the Session doth continue until that Session be prorogued or dissolved: and this is evident by many precedents in Parliament ancient and late.

The Parliament of 14 E. 3. began at Westminster the Wednesday after Mid Lent: Rot. Parl. 14 E. 3. the first Monday of the Parliament, the ninth part of their Chain, Wool and Stat. primo. n. 7, 8, Lamb, &c. was granted to the King, on condition that the King would grant 9, &c. their petitions in a Schedule beginning. These be the petitions which by the Commons and Lords was drawn into a form of a Statute, and passed both Houses, and the Royal assent thereunto, and the same exemplified under the Great Seal. After this the Parliament continued, and divers Acts made, and petitions granted, and in the end that Parliament was dissolved.

In the Parliament holden An. 3 R. 2. it is declared by Act of Parliament that the killing of John Imperiall Ambassador of Jenoa, was High Treason crimen læsæ majestatis, and yet the Parliament continued long after, and divers Acts of Parliament afterwards made, and petitions granted: and in the end the Parliament dissolved. Rot. Parl. 3 R. 2. nu. 18. &c.

In the Parliament begun the first day of March, An. 7 H. 4. on Saturday the 8 day of May it was enacted by the King, the Lords Spiritual and Temporal, and the Commons, that certain strangers by name, who seemed to be Officers to the Queen, should by a day depart the Realm, and proclamation thereof in kind made by Writ, by authority of Parliament, which Parliament continued, and divers other Acts of Parliament made, and petitions answered: and on the 22 day of December 8 H. 4. dissolved. Rot. Parl. 7 H. 4. nu. 29. &c.

The Parliament begun 7 November, and on the first day of the Parliament it was resolved by all the Judges, that those that were attainted of treason, and returned Knights, Citizens, or Burgesses of Parliament, that the attainders were to be reversed by authority of Parliament before they could sit in the House of Commons: and that after the attainders reversed, both the Lords, and those of the House of Commons might take their places, for such as were attainted could not be lawful Judges, so long as their attainders stood in force: and thereupon the attainders were reversed by Act of Parliament, and then they took their places in Parliament, and the Parliament continued and divers Acts made. Rot. Parl. 1 H. 7. nu. 1 H. 7. fol. 4. b.

* The Bill of Queen Katherine Howards attainder passed both Houses about the beginning of the Parliament, whereunto the King, sitting the Parliament, by his Letters Patents gave his Royal assent, and yet the Parliament continued until the first day of April, and divers Acts of Parliament passed after the said Royal assent given. Divers more might be produced, but these shall suffice. So as albeit Bills pass both Houses, and the Royal assent given thereunto, there is no Session until a prorogation or a dissolution. * Rot. Parl. 33 H. 8. begun the 16 day of Jan. and continued till the 1. of April following. On the 12 of Febr. the Queen was beheaded in the Tower, sitting the Parliament. Prorogo, a porro & rogo, unde prorogatio. Adjournment, unde adjournare, & adjournamentum, est ad diem dicere, or diem dare.

The diversity between a prorogation and an adjournment, or continuance of the Parliament, is, that by the prorogation in open Court there is a Session, and then such Bills as passed in either House, or by both Houses, and had no Royal assent to them, must at the next assembly begin again, &c. for every several Session of Parliament is in Law a several Parliament: but if it be but adjourned or continued, then is there no Session: and consequently, all things continue still in the same state they were in before the adjournment or continuance. Rot. Parl. 23 H. 8. 24 H. 8. n. 1. 25 H. 8. n. 1. 26 H. 8. n. 1. 27 H. 8. n. 1. &c. 2 & 3 E. 6. n. 1. 3 & 4 E. 6. n. 1. &c. 1 Mar. Sess. 2. 28 El. nu. 1. &c. And in every of them it is said [and there continued until such a day;]

And the title of divers Acts of Parliament be, At the Session holden by prorogation, or by adjournment and prorogation, but never by continuance or adjournment tantum. And the usual form of pleading is, ad Sessionem tentam, &c. per prorogationem.

and yet in them divers adjournments were. See the Journal Book in the Lords House. ultimo Junii 14 El. Custos Magni Sigilli ex mandato Domine Regine adjournavit præsens Parliament' usq; in festum omnium Sanctorum. And in the Parliament in An. 39 El. Custos magni Sigilli ex mandato Domine Regine (the Queen being absent.)

We have been the longer and more curious for the clearing of this point for two reasons, 1. For that the adjournment or continuance (as before it appeareth) is much more beneficial for the Commonwealth for expediting of causes, then a prorogation. 2. In respect of a clause in the Act of Subsidy in the Parliament holden in Anno 18 Jac. Regis, which is but declaratory of the former Law, as by that which hath been said appeareth.

When a Parliament is called and doth sit, and is dissolved without any Act of Parliament passed, or judgment given, it is no Session of Parliament, but a Convention.

Rot. Parl. 18 R. 2.
which began 15
Hillarii.

In the 18 year of R. 2. at a Parliament holden before the Duke of York (the King being in his passage to Ireland) the petitions of the Commons were answered: and a Judgment given in the Kings Bench for the Priory of Newport-pannel, against the Dean and Chapter of Lichfield was reversed, but no Act of Parliament passed, and therefore this Parliament is omitted in the print: but it is no question but it was a Session of Parliament, for otherwise the Judgment should not be of force: and many times Judgments given in Parliament have been executed, the Parliament continuing before any Bill passed.

The House of Commons is a distinct Court.

Nota, the House of Commons is to many purposes a distinct Court, and therefore is not prorogued, or adjourned by the prorogation or adjournment of the Lords House: but the Speaker upon signification of the Kings pleasure by the assent of the House of Commons, doth say; This Court doth prorogue or adjourn it self; and then it is prorogued or adjourned, and not before. But when it is dissolved, the House of Commons are sent for up to the higher House, and there the Lord Keeper by the Kings commandment dissolveth the Parliament; and then it is dissolved, and not before. And the King at the time of the dissolution ought to be there in person, or by representation: for as it cannot begin without the presence of the King either in person or by representation, (as before it hath been said) so it cannot end or be dissolved without his presence either in person or by representation. Nihil enim tam conveniens est naturali æquitati, unumquodq; dissolvi eo ligamine quo ligatum est.

Bracon.

33 H. 2. cap. 21.
Royal assent by
Letters Patents.
Dier. 1 Mar. 93.
Commission au 4
Seigniors, &c. a
doner Royal assent,
& indorcement fait
Soit fait come cest
desire.

It is declared by Act of Parliament, that the Kings Letters Patents under his Great Seal, and signed with his hand, and declared and notified in his absence to the Lords Spiritual and Temporal and Commons assembled in the higher House of Parliament, is, and ever was of as good strength and force, as if the Kings person had been there personally present, and had assented openly and publickly to the same.

Of Subsidies and Aids granted by Parliament.

Subsidy is derived of the Verb Subsidiari, which signifieth to be ready to help at need, unde subsidium, which signifieth aid and help at need, so properly called, when Souldiers were ready to help the forward of the battel: and aptly was the word so derived, atwel because that which we call now subsidia, Subsidies, were anciently called auxilia, Aids, granted by Act of Parliament upon need and necessity: as also, for that originally and principally they were granted for the defence of the Realm, and the safe keeping of the Seas, &c. Communia pericula requirunt communia auxilia.

Ph. Cominrus,
Lib. 5. fo. 233.

This word [Subsidy] is common as well to the English, as to the French. Concerning Subsidies hear what a stranger truly writeth. Reges Angliæ nihil tale, nisi convocatis primis ordinibus, & assentiente populo, suscipiunt. Quæ consuetudo valde mihi laudanda videtur; interveniente enim populi voluntate & assensu crescit robur, & potentia regum, & major est ipsorum autoritas, & feliciores progressus.

Subsidies taken in their general sense for Parliamentary Aids are divided into perpetual and temporary: perpetual, into three parts, viz. into Customa antiqua

antiqua, five magna, custuma nova five parva, and into custum of Broad cloth. Tempozary, whereof there are three kinds, viz. 1. Of Tunnage and Poundage of ancient time granted for a year or years incertainly, and of later times for life. 2. A Subsidy after the rate of 4 s. in the pound for Lands, and 2 s. 8 d. for Goods. And 3. for an Aide called a Fiftenth. And of these in order.

Custuma antiqua five magna.

Custuma antiqua five magna was by Act of Parliament granted to King E. 1. his Heirs and Successors for Transportation of three things, viz. Wools, Woolfels and Leather, viz. for every sack of Wool containing thirty six stone, and every stone fourteen pound, half a mark; and for three hundred Woolfels half a mark, and for a last of Leather thirteen shillings four pence, to be paid as well by Strangers as by English, Prælati, Magnates, & tota communitas concesserunt quandam novam consuetudinem nobis de lanis, pellibus & coriis dimid' marc', de 300 pellibus dimid' marc', & de lasta coriorum unam marcum. In the Statute called confirmaciones cartarum Anno 25 E. 1. there is a saving in these words, Save a nous, & nous heires la custome des leynes, pealx & quires grant' per le Comminalty du Realm. See also the like in the Preamble: * Salva tamen nobis & hæredibus nostris custuma lanarum, pellium & coriorum per Communitatem dicti regni nobis prius concess.

a Note it is said in divers Records, per Communitatem Angliæ nobis concess. because all grants of Subsidies or Aids by Parliament do begin in the House of Commons, and first granted by them: also because in effect the whole profit which the King reapeth doth come from the Commons.

Custuma parva & nova.

In the 31 year of E. 1. the Merchant Strangers in consideration of certain liberties and privileges granted to them, and a release to them of all prises and takings, gave to the King and his Heirs, three shillings four pence, ultra antiquam custumam ut prius concess. So as where the Subject paid a Noble, the Stranger paid ten shillings, &c. See the Statutes of 1 H. 7. cap. 2. 11 H. 7. ca. 14. 22 H. 8. cap. 8.

This was questioned Rot. ordinat. Anno 5 E. 2. but allowed of in Parliament, Anno 1 E. 3. 9 E. 3. Stat. Stapl. ca. 26. F. N. B. 227. d. 259 a.

Custom of what things, ex antiquo.

And it is to be observed, that of ancient time no Custom was by English or Stranger, but for Wools, Woolfels, and Leather. Hereby it appeareth how necessary the knowledge of ancient Records, and of the true original of every thing is. 1 El. Dier 165.

In the Reign of E. 3. a great part of the Wools for the which such Custom was granted and paid, as is aforesaid, was draped into broad Cloth: whereupon question grew, whether upon Transportation of the Cloth, into which the Wool was draped, Custom should be proportionably paid, having regard to the quantity of the Wool so converted into Cloth: and it was resolved, that no Custom should in that case be paid, because the Wool by the labour and industry of man was changed into another kind of merchandize: wherewith the King held himself satisfied, and so it appeareth in the Kings own Writs and Records enrolled in the Exchequer. Of Wools draped into Cloth no Custom was due.

The first Act of Parliament that gave any Subsidy of Cloth, was in Anno 21 E. 3. (not printed) viz. fourteen pence of Lieges, and one and twenty pence of

See hereafter, c. 11
Verb. de nous Cu-
stomes, &c.
Rot. finium An.
3 E. 1. Rot. Pa.
3 E. 1. m. 1. dat.
10 Novemb. which
was in the end of
the year, for he be-
gan his reign 17
Nov. Confirmat.
Cartarū Ver. Mag.
Cart. 2. part. f. 36. a.
* Int. brev. de
Term. Mich.
26 E. 1. In offi.
remem. regis.
4 12 H. 4. nu. 45.
6 H. 6. nu. 11.
12 E. 4. ca. 3. 7 E. 4.
n. 30. 1 E. 6. ca. 13.
1 Mar. cap. 18.
1 Eliz. ca. 19.
& 3 Jac. Regis
accord.

Custuma is deri-
ved of the French
word *Consum*, i.
tributum seu ve-
ctigal.
Rot. Cart. 31 E. 1.
nu. 44. called,
Carta mercatoria;

Int. Orig. de
Scaccario.
24 E. 3. Rot. 13.
Ib. 27 E. 3. Rot. 4.
See the second
part of the Insti-
tutes, Mag. Cart.
cap. 30. pa. 60.
By 27 E. 3. Stat. 1.
& ca. 4. Custom of
Cloth.
* Viz. the Subsi-
dies granted in
Anno 21 E. 3.
The Alnagers fee
of the Subject
granted by Par-
liament.
Mag. Cart. ca. 30.
Conſuetudines.
Stat. de Scaccario.
51 H. 3. Custom
des Leynes.
11 H. 4. ca. 7.

of Strangers for every Cloth of Aſſiſe, and two ſhillings four pence of Lieges, and three ſhillings ſix pence of Strangers for every Cloth of Scarlet, &c. Vide inter Original' de Scaccario, 24 E. 3. Rot. 13. And the reason of granting the ſaid Subſidies of broad Cloth was, Quia jam magna pars lanæ regni noſtri in eodem regno pannificitur, de qua Cuſtuma aliqua non eſt ſoluta, per quod proficuum quod de Cuſtumis & Subſidiis lanarum, ſi extra dictum regnum ducerentur, percipere debemus, in multo diminuuntur, &c. And yet if in any caſe the King might by his Prerogative have ſet any impoſition, he might have ſet one in that caſe, for that as it appeareth by that Record, by making of Cloth the King loſt his Cuſtoms of Wool: and therefore for further ſatisfaction of the King for the Cuſtom of Wool at the Parliament holden in Anno 27 E. 3. a Subſidy was granted to the King, his Heirs and Succeſſors, (* over the Cuſtoms thereof due) viz. of every whole Cloth of Aſſiſe not ingrained four pence, and for the half of ſuch a Cloth, two pence, and of every Cloth ingrained five pence, and of the half two pence half penny, and of every Cloth of Scarlet ſix pence, and of the half three pence; and the Alnagers fee is granted to him by Act of Parliament, viz. for the meaſuring of every Cloth of Aſſiſe of the Seller a half penny, and of half a cloth a farthing for his office, and no more, nor ſhall they take any thing for a cloth that is leſs: and that he take nothing of the Alnage of any cloth but only of ſuch cloth as is to be ſold. And both in this Act, and in ſome Acts in the Reign of H. 3. conſuetudines & cuſtumæ, which are engliſhed, Cuſtoms, are taken for the Subſidies that were granted by Parliament, for verily thoſe were ancient and right Cuſtoms or Subſidies. And in the Statute of 11 H. 4. Cuſtoms and Subſidies are uſed as Synonyma's.

Butlerage.

Butlerage is a Cuſtom due to the King of two ſhillings of every Tun of Wine brought into this Realm by Strangers: but Engliſhmen pay it not.

Lib. rubeus in
Scacc. fo. 265.
Vid. 6 E. 3. fo. 5.
& 6. the Archb.
Yorks caſe.

In libro Rubeo in Scaccario in cuſtodia Rememoratoris Regis, fol. 265. the grant of King John to the Merchants of Aquitain trading for Wines thence into England of divers liberties, viz. De libertatibus conceſſis mercatoribus vinetariis de Ducatu Aquitaniæ, reddendo regi & hæredibus ſuis 2 s. de quolibet dolio vini ducti per eodem infra regnum Angliæ vel poteſtatem regis.

Rot. Cartarum
Anno 31 E. 1.
nu. 44. called Car-
ta mercatoria.

All Merchants Strangers in conſideration of the grant to them by the King of divers liberties and freedoms, conceſſerunt quod de quolibet dolio vini quod adduci facerent infra regnum, &c. ſolvent nobis & hæredibus noſtris nomine Cuſtumæ duos ſolidos, &c.

Prifaſe.

Fleta li. 2. ca. 21.
Rot. Pat. 40 H. 3.
Rot. Par. 28 E. 1.
pro Math. de Co-
lumbiar'.

Prifaſe is a Cuſtom due to the King of the Wines brought in by the Merchants of England of every Ship having twenty Tuns or more, two Tuns, viz. one before the Maſt, and the other behind, paying twenty ſhillings for each Tun; and this is called certa priſa, and recta priſa, and regia priſa, as in the Record enſuing appeareth, and hereof Merchant Strangers are diſcharged, per cartam mercatoriam, 31 E. 1. Ubi ſupra.

P. Rec. 20 R. 2.
Vid. Tr. 33 E. 1.
Rot. 124. Priſa
Vinorum in Hi-
bernia.

Memorandum quod rex habet ex antiqua conſuetudine de qualibet nave mercatoris vini 6. carcat' applicari infra aliquem portum Angliæ de viginti doliis duo dolia, & de decem doliis unum de priſa regia pro quodam certo ab antiquo conſtitut' ſolvend'.

Whereby it appeareth that Priſage is due by preſcription, and that it was a certainty of ancient time ordained to be paid.

43 E. 3. ca. 3. &
1 H. 8. ca. 5.
Concerning the
Alnaging of new
Draperies.

It is called Butlerage becauſe the Kings chief Butler doth receive it, and Priſage, becauſe it is a certain taking or purveyance for Wine to the Kings uſe.

In Hillary Term, Anno 2 Jac. Regis, upon a ſuit made to the King by the Duke of Lenox, queſtion was moved concerning new Draperies, as Friſa-
does

does, Bayes, Northern Cottons, Northern Dozens, Cloth rash, Durances, Perpetuanos, Fustians, Canvas, Sackcloth, Worsteads, and Stuffs made of Worstead yarn, whether the King might grant the Alnaging of them with a reasonable fee, or whether they were within the said Statute of 27 E.3. And these questions were by the Kings commandment in this Hillary Term referred to all the Judges of England to certify their Opinions concerning the suit to the Lords of his Privy Council: who upon often hearing of the cause, and mature deliberation and conference amongst themselves, in the end in Trinity Term following with one unanimous consent, certified in writing in these words following, viz. To the Lords and others of his Majesties most Honourable Privy Council. Our duties to your Lordships remembered. May it please the same to be advertised, that according to your Letters in that behalf, we have heard the matter touching the farm of the Alnage and measurage that is sought to be granted by his Majesty of sundry kinds, as well of new made Drapery, as of other Stuffs made within this Realm. And upon hearing as well of some of the part of the Master of Orkney, as others, both of the behalf of the Duke of Lenox and Master Shaw, have informed our selves touching the same. And for our opinions we are resolved, that all new made Drapery made wholly of Wool, as Frizadoes, Bayes, Northern Dozens, Northern Cottons, Cloth rash, and other like Drapery, of what new name soever, for the use of mansbody, are to yield Subsidy and Alnage according to the Statute of 27 E.3. and within the office of the ancient Alnage, as may appear by several decrees in that behalf made in the Exchequer in the time of the late Queen. But as touching Fustians, Canvas, Sackcloth and such like, made meerly of other stuff then Wool, or being but mixed with Wool, we are of Opinion, that no charge can be imposed for the search or measurage thereof, but that all such Patents so made are void, as may appear by a Record of the 11 year of H. 4. wherein the reason of the Judgment is particularly mentioned, which we held not amiss to set down to your Lordships, which is thus, The same King H.4. granted the measurage of all Woollen Cloth and Canvas that should be brought to London to be sold by any stranger or denizen (except he were free of London) taking one half penny for every piece of Cloth so measured of the feller, and one other half penny of the buyer, and so after the rate for a greater or lesser quantity, and one penny for measuring of 100 Ells of Canvas of the feller, and so much more of the buyer. And although it were averred that two other had enjoyed the same office before with the like fees, viz. one *Shering* by the same Kings grant, and one *Clytheroe* before by the grant of King R. 2. yet, amongst other reasons of the Judgment, it was set down and adjudged, that the former possession was by extortion and coercion, and without right, and that those Patents were *in onerationem, oppressionem & depauperationem populi Domini Regis, & non in emendationem ejusdem populi, &c.* and no benefit to the King, and therefore the Patents void. And as touching the narrow new stuff made in Norwich and other places with worstead yarn, we are of opinion that it is not grantable, nor fit to be granted, for we cannot find, that there was ever any Alnage upon Norwich worsteads. And for these stuffs, if after they be made and tacked up for sale by the makers thereof, they should be again opened to be viewed and measured, they will not well fall into their old plaits to be tacked up as before, which will be (as is affirmed) a great hinderance to the sales thereof in gross, for that they will not then appear to be so merchandizable, as they were upon the first making of them up. And even so we humbly take our leaves. Serjeants-Inn, the 24 of June, 1605. Which Certificate being read by the Lords of the Privy Council (I being then Attorney general and present) was well approved by them all, and commandment given, that it should be kept in the Council Chest to be a direction for them to give answer to all suits of that kind.

And it is to be observed, * that Acts of Parliament that are made against the freedom of trade, merchandizing handicrafts, and mysteries, never live long.

See Rot. Parl.
50 E.3. nu. 142.
Cogware Kerseys.
See hereafter,
cap. 67.
See Rot. Parl.
9 H. 4. nu. 34.
Kendall Clothes,
&c. 11 H.4. c.2.
enact. 11 H.4. nu.
26. for remnant
of Cloth, &c.
11 H.4. c.7. Stat.2.

37 E.3. ca. 5, 6.
38 E.3. ca. 2.
Lib. 11. fo. 54.
de Taylers de
Ipswich.

Bills, Motions.

Good Bills or Motions in Parliament seldom die.

8 E.2.nu.17 E.3.
nu.49. 1 R.2.
nu.82. 4 R.2.
nu.36. 9 R.2.
no.44. 1 H.4.
nu.121. 2 H.4.
nu.83. 2 H.4.
nu.70. 11 H.4.

It is an observation proved by a great number of presidents, that never any good Bill was preferred, or good motion made in Parliament, whereof any mortal was made in the Journal Book, or otherwise, though sometime it succeeded not at the first, yet hath it never died, but at one time or other hath taken effect, which may be a great encouragement to worthy and industrious attempts, as taking some few examples for many, which I have quoted in the margin.

nu.47. 1 H.5.nu.23. 7 H.5.nu.18. 1 H.6.nu.41. 7 E.4.nu.20. *Acts of Parliament.* 2 E.3. cap.2. 25 E.3.ca.5. 4 H.4. ca.22 1 H.5. cap.1.15. H.6. cap.14. 1 R.3.ca.3. 21 H.8. cap.5. 23 H.8. cap.4. 25 H.8. cap.3. 31 H.8.ca.1. 32 H.8. cap.32. 2 E.6. cap.8. & 13. 1 & 2 Ph. & Mar. cap.13. *Vide infra*, cap.8.pa.

The Subsidy of Tunnage and Poundage.

By the subsequent Records you shall observe 13 things. 1. The grant of Poundage only. 2. Of Tunnage and Poundage. 3. Several rates, sometimes 6 d. 8 d. 12 d. for Poundage. 4. Sometimes 2 s. 18 d. 3 s. 5. Hac vice, 1, 2, 3, 4 years for life. 6. To Merchants, &c. 7. To have intermission and to vary, lest the King should claim it as a duty. 8. Expressed upon free gift. 9. Upon condition to keep the Seas, and for commerce. 10. That is ever the consideration and cause of the grant. 11. Granted without retrospect. 12. Sometimes double of Strangers. 13. Cloth excepted, that it be not subject to Tunnage and Poundage. 31 H.6.

The Records.

447 E.3. nu.12.
6 R.2.nu.13.
7 R.2. stat.1.

45 R.2.nu.40.
9 R.2.nu.11.
10 R.2.nu.18.
11 R.2.nu.12.
13 R.2.nu.20.
14 R.2.nu.12.
17 R.2.nu.12.
2 H.4.nu.9.
4 H.4.nu.28.
6 H.4. nu.9.
8 H.4. nu.9.
9 H.4.nu.27.
11 H.4.nu.45.
13 H.4.nu.10.
1 H.5.nu.17.
3 H.5.nu.50.

72 H.6.nu.14.
93 H.6.nu.17.
9 H.6. nu. 14.
23 H.6.nu.16.
31 H.6.nu.8.
& cap.8.

* Nota.

14 E.4. & 12 E.4. ca.3. in print.
* Rot.Par. 1 H.7. not Printed, for he had many subsidies, but printed none.

* Rot.Par. 1 H.8. not printed.
Vid. 6 H.8. ca.14. in print.

a Of Poundage only, and 6 d. in the pound, for two years upon condition, &c.

b 6 d. for Poundage, and 2 s. for Tunnage of Wine, hac vice.

c 6 d. of every pound of merchandize, and 2 s. of every Tun of Wine, upon condition, &c. hac vice.

d Sometimes to have intermission, and to vary, lest the King should claim as duties.

e For Tunnage of Wine 3 s. and 6 d. for Poundage for one year.

f 3 s. for Tunnage of Wine, 12 d. for Poundage, hac vice.

g 6 d. for Poundage, and 18 d. for Tunnage of Wine for three years.

h 8 d. for Poundage, and 2 s. for Tunnage of Wine.

i 12 d. for Poundage, and 3 s. for Tunnage of Wine for three years.

k 12 d. for Poundage, and 3 s. for Tunnage of Wine for several times upon condition, sometime for one year. In these and most of the former granted upon condition for due employment of their own good will, and so entered, and the King to have a certain sum more expressed.

n 12 d. for Poundage, and 3 s. for Tunnage of Wine for four years.

o The like Subsidy is granted to the King for his life upon conditions, &c. which was the first grant of Tunnage and Poundage for life, which was a leading grant, as hereafter appeareth.

p The Subsidy of Poundage only for two years.

q Tunnage of Wine and Poundage granted for several years.

r Tunnage and Poundage, ut prius of Denizens, double of Strangers.

s Tunnage of Wine and Poundage granted to H.6. for life, with an excepting exception in all subsequent Acts.

t Tunnage of Wine and Poundage granted to E.4. for life with no retrospect, but for the time to come.

u At the Parliament holden Anno 1 H. 7. a like Act was made for the grant of the Subsidies of Tunnage and Poundage to him for his life.

x And the like Subsidy was granted to King H.8. at the Parliament holden Anno 1. of his Reign for his life.

The

The like grant was made to E. 6. Quēn Mary, Quēn Eliz. and King James for their severall libes, and in all these it is affirmed, that the like grants were made by Act of Parliament to King H. 7. and King H. 8.

1 E. 6. c. 13. 1 Mar.
cap. 18. 1 El. c. 19
1 Jac. cap. 33.

The consideration of the grant of these Subsidies of Tunnage and Poundage is ever, as is aforesaid, expressed in the grant for the keeping and safeguard of the Seas, and for intercourse of merchandize safely to come into this Realm, and safely to pass out of the same. And this pertaineth properly to the office of the Lord Admiral to see the consideration of the Act to be performed. * They are granted of the free good will of the Subjects, and so expressly set down in the Parliament Roll.

* Rot. Par. 11 H. 4.
n. 45. 13 H. 4. n. 10.

In King James his Reign, when I was a Commissioner of the Treasury, these Subsidies granted for life amounted to One hundred and threescore thousand pounds per annum, and so letten to farm. The values of the merchandize for the which the Subsidy of Poundage is paid, do appear in a book of rates in print, whereby the Merchant knows what he is to pay. The Subsidy of Tunnage of wine is certain in these Acts by the contents of the Vessels: and none of these Acts do extend to any other liquid merchandize imported or exported, but unto wines only: and seeing nothing is more uncertain then the continuance of the value of merchandizes whereof the Subsidy of Poundage is paid, it were good at every grant of them to set down the rates in a schedule annexed to the bill.

A Book of rates
or values.

Subsidies temporary and usual at this day.

Subsidies temporary and usual at this day. And this is when the Commons in Parliament freely grant to the King an aid to be levied of every Subject of his lands or goods after the rate of 4 s. in the pound for lands, and 2 s. 8 d. for goods, and for Aliens for goods double, to such ends and for such considerations, and to be paid at such times, as by the Acts thereof (which are usual and frequent) do appear. And in former times in this kind of Subsidy, this order was observed, that over and above the Subsidy of Tunnage and Poundage, the Commons never gave above one Subsidy of this kind, and two Fifteens, (and sometime less) one Subsidy amounting to Seventy thousand pounds, and each Fifteen at Twenty nine thousand pounds, or near thereabouts; nor above one Subsidy, which did rise to Twenty thousand pounds, the Clergy gave not.

At the Parliament holden in 31 Eliz. the Commons gave two Subsidies, and four Fifteens, which first brake the circle.

In 35 Eliz. three Subsidies and six Fifteens.

In 39 Eliz. three Subsidies and six Fifteens.

In 43 Eliz. four Subsidies and eight Fifteens, &c.

In 21 Jac. Regis, three Subsidies and six Fifteens in shorter times then had been before.

In 3 Car. Regis, five Subsidies in shortest time of all.

And it is worthy of observation how quietly Subsidies granted in forms usual and accustomed (though heavy) are borne; such a power hath use and custom: On the other side, what discontentments and disturbances Subsidies framed in new molds do raise, (such an inbred hatred novelty doth hatch) is evident by examples of former times.

As that of 4 R. 2. a new invention of Subsidies of the Kings Subjects of either sex by the poll, &c. for the furnishing of the Earl of Buckingham for his going into France, whereupon a strong and a strange Rebellion ensued, wherein three great and worthy Officers were by the rascal Rebels barbarously and wickedly murdered, viz. Simon Sudbury Archbishop of Canterbury, Chancellor of England, the Prior of S. Johns of Jerusalem, Treasurer of England, and Sir John Cavendish, Chief Justice of England.

Rot. Par. 4 R. 2.
nu. 15.
5 R. 3. nu. 32.

In 4 H. 7. another like new found Subsidy was granted, which raised a rebellion in the North, in which the noble Earl of Northumberland a Commissioner in that Subsidy, was by the Rebels cruelly and causelessly slain.

Hollensh. Chron.
769.

Hollensh. Chron.
891.

In Anno 16 H.8. to furnish the King for his going in his royal Person into France, a new device for getting of mony was set on foot, which made the headless and headless multitude to rise in rebellion, until Charles Brandon the noble Duke of Suff^r quieted, and dispersed them.

Rot. Par. 9 E. 3.
nu. 2.

At the Parliament holden in 9 E.3. when a motion was made for a Subsidy to be granted of a new kind, the Commons answered, that they would have conference with those of their several Countries and places, who had put them in trust, before they treated of any such matter.

9 H. 6. nu. 15.
10 H. 6. nu. 50.

Vide 9 H.6. n.15. Every Knights fee to pay 20 s. and so according to the value under 10 s. and so of the Clergy for lands purchased since 20 E.1. And all other having 20 l. lands not holden as is aforesaid, 20 s. &c. This whole Subsidy for certain doubts the King utterly released, so as there is no mention made of the same: But hereof thus much shall suffice.

Sæpe viatorem nova, non vetus orbita fallit.

Of Fifteens, Quinzims, &c.

Fifteens, Quinzim
or Task, or Quinta
decima.

A Fifteen is a temporary Aid granted to the King by Parliament, which without further inquiry is certain, and therein differeth from the Subsidy, which is ever uncertain, until it be assessed.

Second part Inst.
Mag.Cart. cap. ult.

The Fifteen of ancient time was the fifteenth part of goods moveable, but in 8 E.3. all the Cities, Boroughs, and Towns in England were rated certainly at the fifteenth part of the value at that time generally upon the whole Town, whereof you shall read more at large in the Second part of the Institutes, in the last Chapter of Magna Carta, Verb. Quintam decimam partem bonorum mobilium.

Of Tenths.

There is decima pars of the Laity, and for the most part of Cities and Boroughs by their goods (Vid. 1 R.2. nu. 26.) which proportionably is, secundum decimam quintam partem. That which we call Tax, Tallage, Tenth, and Fifteen, the Saxons called Geldinn, * we use the word changing g to y, for gelding, yeelding, &c.

*Doomsday. Norf.
in Wancilunt, i.
Wayland, & ibid.
in Frebringe in
Maffingham, &c.

So * Subsidy before the end of the Parliament, because it is to accompany the pardon.

* Rot.Par. 11 R.2.

nu. 11. This is contained in the Act of Subsidy, and so an Act of Parliament: and accordingly Subsidies, &c. have been granted, as in the book of Statutes appeareth.

Rot.Par. 2 H.5. n. 20
1 H.6. n. 46. 3 H.7
to the Queen. 6 H.
8. to the Duke of
Suff.

Of Acts of Parliament of confirmation of Letters Patents.

We have read of particular Acts of confirmation of Letters Patents; but the first of lands, &c. that was the more general, was the Statute of 31 H.8. c. 13. of Monasteries (to make those lands the more passable) but after that, general Acts of confirmation of Letters Patents have been very frequent.

How the Lords give their voices.

In the Lords House, the Lords give their voices from the puisne Lord Seriatim by the word of [content,] or [not content.]

Rot. Par. 6 H.6.
nu. 27.

A bill was preferred at the Parliament holden in Anno 6 H. 6. that no man should contract or marry himself to any Queen Dowager of England without special licence and assent of the King, on pain to lose all his goods and lands. The Bishops and Clergy assented to this Bill, by the word of [content,] as far forth as the same swarved not from the Law of God and of the Church, and so as the same imported no deadly sin. At this time there were besides the Archbishops and Bishops, 27 Abbots and 2 Priors, (albeit in troth the number was many times uncertain, as in the close Roll it appeareth) which severally held

How many Lords
Spiritual in former
times.

per

per Baroniam, and were Lords of Parliament, and so continued until they were dissolved in the Reign of H.8. The entry of the said Act of 6 H. 6. in the Roll is: It is enacted by the King, Lords Temporal, and Commons, that no man should contract or marry himself to any Queen of England, without the special license and assent of the King, on pain to lose all his goods and lands. The Bishops and Clergy assented to this Bill, as far forth as the same swerved not from the Law of God, and of the Church, and so as the same imported no deadly sin.

This is holden to be an Act of Parliament: First, For that the assent of the Clergy could not be conditional. Secondly, It was not against the Law of God nor of the Church, nor imported any deadly sin to make this Law by authority of Parliament, as it appeareth by Magna Carta cap. 7. which had by 32 Acts of Parliament been confirmed, and many others.

This Law was made after the marriage of Queen Katherine Dowager of H.5. with Owen ap Meredith ap Grono (descended of the Princes of Wales) by whom she had issue Edmond of Hadham aforesaid, Carl of Richmond, and Jasper of Hatfield, after Carl of Pembroke, and Duke of Bedford.

How the Commons give their voices.

The Commons give their voices upon the question, by *Pea* or *No*; and if it be doubtful, and neither party yield, two are appointed to number them; one for the *Pea*, another for the *No*: the *Pea* going out, and the *No* sitting: and thereof report is made to the House. At a Committee, though it be of the whole House, the *Peas* go of one side of the House, and the *Noes* on the other, whereby it will easily appear which is the greatest number.

Pl com. 126. mistaketh it, and that the Clerk number them.

How Parliaments succeed not well in five Cases.

It is observed by ancient Parliament men out of Record, that Parliaments have not succeeded well in five Cases. 1. When the King hath been in displeasure with his Lords, or with his Commons. 2. When any of the Great Lords were at variance between themselves. 3. When there was no good correspondence between the Lords and the Commons. 4. When there was no unity between the Commons themselves. 5. When there was no preparation for the Parliament before it began.

a For the first: So essential is the Kings good will towards his Commons, that it was one of the petitions of the Commons to the King, that he would require the Archbishop and all other of the Clergy to pray for his estate, for the peace and good government of the land, and for the continuance of the Kings good will towards his Commons: whereunto the thrice noble King assented with these effectual words, The same prayeth the King: and many times the like petitions for the Lords. b How the King in all his weighty affairs had used the advice of his Lords and Commons, (so great a trust and confidence he had in them.) Always provided, that both Lords and Commons keep them within the circle of the Law and custom of the Parliament.

a Rot. Parl. 37 E. 3. n. 2. and the Writ to the Clergy, *De orando pro Rege & Regno*, which was usual in those days

b Rot. Parl. 43 E. 3. n. 1. 25 E. 3. n. 15. 50 E. 3. nu. 2.

c For the second: At the Parliament holden in 4 H. 6. what variance was there between the Duke of Glouc. and the B. of Winchester, and their friends on either side? The success was, that little was done in any Parliamentary course at that Parliament, and that little was of no moment.

c Rot. Parl. 4 H. 6. n. 12. See the Acts of that Parliament.

d At the Parliament holden in the 30 year of H. 6. the great controversie was between John Carl Marshall, and Richard Carl of Warwick with like success.

d Rot. Parl. 3 H. 6. n. 1. & 10.

e The like controversie between William Carl of Arundel and Thomas Carl of Devon, for superiority of place, with like event. And many more might be cited.

e Rot. Parl. 27 H. 6. n. 18.

f And always in the beginning amity was made between the Grandees of the Realm by shaking of hands and kissing, and sometime by * submission.

f Rot. Parl. 2 H. 4. n. 14. 5 H. 4. n. 18. 20.

For the third: When it was demanded by the Lords and Commons what might be a principal motive for them to have good success in Parliament, it was answered, *Eritis insuperabiles, si fueritis inseparabiles*. *Explosum est illud diverbium: Divide, & impera: cum radix & vertex imperii in obedientium consensu rata sunt.*

* Rot. Parl. 21 R. 2. by the Count of Arundell to the D. of Lancast. 4 H. 6. nu. 12.

For

Rot. Parl. Anno 11
H. 4. n. 10. the King
desired this unity.
20 Judicum.

For the fourth: Unity between the Commons them selves. It is most necessary in both these, and agreeable to the Parliament in the Book of Judges, Quasi homo unus, eadem mente, uno consilio.

1 Chron. cap. 23.

For the fifth: The Summons of Parliament is by forty days or above before the sitting, to the end that preparations might be had for the arduous and urgent affairs of the Realm: and that both the King, according to the example of King David, and likewise the Nobles and Commons should prepare; for preparata meditationes sunt semper saniores & meliores quam properata, wherein both Houses may greatly expedite the business of the Commonwealth in Parliament, if they will pursue the ancient custom of Parliament, viz. in the beginning thereof to appoint a select Committee to consider of the Bills in the two last Parliaments that passed both Houses, or either of them, and such as had been preferred, read, or committed, and to take out of them, such as be most profitable for the Commonwealth.

The honour and antiquity of the Parliament.

7 H. 6. 28. l. 11. f. 14
Inter leges Ed.
wardi Regis, c. 8.

For the honour and antiquity of the Parliament, see the first part of the Institutes, Sect. 164. Verb. Veigne les Burgesles, and in the Preface to the ninth Book of my Reports, fol. 1, 2, 3, 4, &c. whereunto you may add, In leges Edwardi Regis, cap. 8. De decimis Ecclesiarum reddendis, Sect. De apibus vero, &c. Hæc enim prædicavit beatus Augustinus, & concessa sunt à Rege Baronibus & populo. A grant by express Act of Parliament. Vide infra, cap. 79. pag.

The power and jurisdiction of the Parliament.

a See 13 El. cap. 1
39 H. 6. 15.
Vide infra. c. 79.

b Fortesc. c. 18.

c Virgil.

d Rot. Parl. 12 E. 4.
nu. 20, 21, 22. the
case of the wives
of the Duke of
Clarence and Glo-
cester.

e 12 E. 4. nu. 34.
Duke of Bucking-
ham.

f 21 R. 2. n. 27. Sir
Ro. Plesington.
31 H. 6. cap. 1.

g This is usual in
many Parliaments.

h Rot. Par. 5 & 6 E.
6. the L. Marquis
of Winchester's case.

i Rot. Par. An. 20
R. 2. m. 6.
k Beaufort came to
the House of Lanc.
by marriage be-
tween Blanch of
Artois and Edmond
first Earl of Lanc.

l Rot. Par. 20 R. 2.
mem. 7. m This John in An. 21 R. 2. was created Earl of Somerset, and Marquis Dorset. But in 1 H. 4. the Marquisship was taken away by Parliament. n This Henry was after Bishop of Winchester, Cardinal of S. Euseby, and Chancellor of England. o This Thomas was in 21 R. 2. created Earl of Dorset. p For Domicellus, &c. see Lamb. inter leges Edw. fo. 139. b Nos indiscrete domicellos de pluribus dicimus, quia Baronum filios vocamus domicellos, Angli vero nullos, nisi natos regum. q Joane was first married to Ralph the first Earl of Westmerland, and after to Robert Ferrers L. of Oswestry.

a Of the power and jurisdiction of the Parliament, for making of Laws in proceeding by Bill, it is so transcendent and absolute, as it cannot be confined either for causes or persons within any bounds. Of this Court it is truly said: b Si antiquitatem spectes, est vetustissima, si dignitatem, est honoratissima, si jurisdictionem, est capacissima.

c Huic ego nec metas rerum, nec tempora pono.

Per some examples are desired, d Daughters and Heirs apparent of a man or woman, may by Act of Parliament inherit during the life of the Ancestor.

e It may adjudge an Infant, or Minor of full age.

f To attain a man of Treason after his death.

g To naturalize a meer Alien, and make him a Subject born. h It may bastard a child that by Law is legitimate, viz. begotten by an Adulterer, the husband being within the four Seas.

To legitimate one that is illegitimate, and born before marriage absolutely. And to legitimate secundum quid, but not simpliciter. As to take one example for many.

i John of Gaunt Duke of Lancaster had by Katherine Swinford before marriage four illegitimate children, viz. Henry, John, Thomas, and Joane. And because they were born at k Beaufort in France, they were vulgarly called Henry de Beaufort, &c. John before the 20 year of R. 2. was knighted, and Henry became Priest. l At the Parliament holden 20 R. 2. the King by Act of Parliament in form of a Charter doth legitimate these three sons, and Joane the daughter: and the Charter beginneth thus. Rex, &c. Charissimis consanguineis nostris nobilibus viris m Johanni Militi: n Henrico Clerico: o Thomæ p domicello, ac dilectæ nobis nobili mulieri q Johannæ Beaufort domicelle, Germanis præcharissimi avunculi nostri, Johannis Ducis Lancastriæ natis ligeis nostris Salutem, &c. Nos dicti

avunculi

avunculi nostri genitoris vestri precibus inclinati, vobiscum qui (ut asseritur) defectu natalium patimini, ut hujusmodi defectu (quem ejusque qualitatibus quascunque presentibus habere volumus pro sufficienter expressis) non obstante ad quæcunque honoris dignitates, (* excepta dignitate regali) præheminentias, status, gradus, & officia publica & privata tam perpetua quam temporalia, atque feudalia ac nobilibus quibuscunque nominibus nuncupantur, etiam si ducatus, principatus, comitatus, Baronia, vel alia feuda fuerint, etiam si mediate, vel immediate, vel à nobis dependant seu teneantur, præfici, promoveri, eligi, assumi & admitti, illaque recipere, retinere, perinde libere & licite valeatis, ac si de legitimo thoro nati existeretis, quibuscunque statutis seu consuetudinibus regni nostri Angliæ in contrarium editis seu observatis (quæ hic habemus pro taliter expressis) nequaquam obstantibus; de plenitudine nostræ regalis potestatis, ac de assensu Parlamento nostri tenore præsentium dispensamus, vosque & vestrum quemlibet Natalibus restituimus, & legitimamus. In cujus rei testimonium. Teste Rege apud Westm. 9 die Febr. Per ipsum regem in Parlamento.

In this Act are divers things worthy of observation. 1. The names whereby they were legitimated. 2. That this legitimation was not simpliciter, but secundum quid: for they were legitimated and made capable of all dignities except the Royal Dignity: so as this legitimation extended not to make them or their posterities inheritable to the Crown, but to all other dignities. 3. That before their legitimation, they were not created to any of their dignities. 4. The brief and artificial penning of this legitimation, with general words, as if the particularity were expressed, and with a brief non obstante, and with as little blemish as may be. 5. And hereby it appeareth, that a H. 7. being son of Edmond of Hadham, Earl of Richmond, and Margaret his wife, Daughter and Heir of John de Beaufort, D. of Somerset: which Margaret lineally descended from the said John de Beaufort, legitimated and made capable of all Dignities, as is aforesaid, excepta regali dignitate, that the best title of H. 7. to the Crown, was by Elizabeth his wife, eldest Daughter of E. 4. Yet before this Marriage the Crown was by Act of Parliament intailed to H. 7. and to the heirs of his body, the right of the Crown then being in the said Elizabeth, eldest Daughter of E. 4. 6. In this Act, the said Thomas before his legitimation could not be called Esq; and therefore he hath this addition of * Domicello, either derived of the French word Domoicell, which signifieth a young Souldier not yet Knighted, or signifieth nobly born. And note, Johan. the Daughter, had the addition of De Beauford and Domicella in that sense also.

b And albeit I find an attainder by Parliament of a subject of High Treason being committed to the Tower, and forth coming to be heard, and yet never called to answer in any of the Houses of Parliament, although I question not the power of the Parliament, for without question the attainder standeth of force in Law: yet this I say of the manner of proceeding, Auferat oblivio, si potest; si non utrunque silentium tegat: for the more high and absolute the Jurisdiction of the Court is, the more just and honourable it ought to be in the proceeding, and to give example of Justice to inferiour Courts. But it is demanded, since he was attainted by Parliament, what should be the reason that our Historians do all agree in this, that he suffered death by a Law which he himself had made? For answer hereof, I had it of Sir Thomas Gawdye Knight, a grave and reverend Judge of the Kings Bench, who lived at that time, that King H. 8. commanded him to attend the chief Justices, and to know whether a man that was forth coming might be attainted of High Treason by Parliament, and never called to his answer. The Judges answered, that it was a dangerous question, and that the High Court of Parliament ought to give examples to inferiour Courts for proceeding according to Justice, and no inferiour Court could do the like; and they thought that the High Court of Parliament would never do it. But being by the express commandment of the King, and pressed by the said Earl to give a direct answer: they said, that if he be attainted by Parliament, it could not come in question afterwards, whether he were called or not called to answer.

G

And

a Nota, pro corona Rot. Parl. Anno 1 H. 7. not in print. 7 H. 4. cap. 2. the like to H. 4. the right of the Crown being then in the descent from Philip, Daughter and Heir of Lionel Duke of Clarence.

Vid. 1 H. 7. 12, 13. 25 H. 8. cap. 22. repeal by 28 H. 8. cap. 7 & 1 Mar. Parl. 1. cap. 1.

See 13 Eliz. ca. 1. in principio.

* See Hovenden, pag. 608. for this word Domicel.

b Rot. Parl. 32 H. 8. The attainder of Tho. Cromwell Earl of Essex.

And albeit their opinion was according to Law, yet might they have made a better answer, for the Statutes of Mag. Cart. ca. 29. 5 E. 3. cap. 9. & 28 E. 3. cap. 5. no man ought to be condemned without answer, &c. which they might have certified, but *facta tenent multa, quæ fieri prohibentur*; the Act of Attainder being passed by Parliament, did bind, as they resolved. The party against whom this was intended, was never called in question, but the first man after the said resolution, that was so attainted, and never called to answer, was the said Carl of Essex; whereupon that erroneous and vulgar opinion amongst our Historians grew, that he died by the same Law which he himself had made. The rehearsal of the said Attainder can work no prejudice, for that I am confidently perswaded, that such honourable and worthy members shall be from time to time of both Houses of Parliament, as never any such Attainder, where the party is forth coming, shall be had hereafter without hearing of him.

a Lex Divina.
John 7. v. 15.
Deut. C. 17. v. 10.
& cap. 19. v. 15.
Mat. Par. 18 Jo-
hannis 273.
*In civile videtur &
contra Canones esse
in hominem ab-
sentem non vocatum,
non convictum nec
confessum, ferre sen-
tentiam. Hereof see
paulo postea.*
b Acts 25. 16.
Gen. 3. 9. Dixit do-
minus, Adam ubi
es. Vide Gen. 18.
21. Ecclesiasticus
11. 7. 8.
c Praxis Sanctorum.
Joshua 7. 19. 22. 23.
&c.
d Jude 20. 3.
e Rot. Parl. 2. H. 6.
nu. 18.

a Nunquid lex nostra judicat hominem, nisi prius audierit ab ipso, & cognoverit quid faciat? Doth our Law judge any man before it hear him and know what he doth? *b* It is not the manner of the Romans to deliver any man to die, before that he which is accused have the accusers face to face, and have licence to answer for himself concerning the crime laid against him.

c Ait Josua ad Acab, Fili mi, da gloriam domino Deo Israel, & confitere mihi quid feceris, ne abscondas.

d Interrogatus Levita maritus mulieris interfectæ quomodo tantum scelus perpetratum esset, &c. And the conclusion is after hearing and discerning the cause, Consider, consult, and then give sentence.

e And as evil was the proceeding in Parliament against Sir John Mortimer, third son of Edmond the second Carl of March, (descended from Lionel Duke of Clarence) who was indicted of High Treason for certain words, in effect, that Edmond Carl of March should be King by right of Inheritance, and that he himself was next rightful heir to the Crown after the said Carl of March, wherefore if the said Carl would not take it upon him, he would: and that he would go into Wales, and raise an Army of 20000 men, &c. which Indictment (without any arraignment or pleading) being merely faigned to blêish the title of the Mortimers, and withall being insufficient in Law, as by the same appeareth, was confirmed by Authority of Parliament: and the said Sir John being brought into the Parliament without arraignment or answer, Judgment in Parliament was given against him upon the said Indictment, That he should be carried to the Tower of London, and drawn through the City to Tyburn, and there hanged, drawn and quartered, his head to be set on London-Bridge, and his four quarters on the four gates of London, as by the Record of Parliament appeareth.

The proceeding in Parliament against Absents.

The ancient Law and Custom of the Parliament was, that when any man was to be charged in Parliament with any crime or offence, or misdemeanour, the Kings Writ was directed to the Sheriff to summon and injoin the party to appear before the King in the next Parliament. For example.

Placita in Parlia-
mento domini Re-
gis, Anno E. 1. 33.
Northampton.

Dominus Rex mandavit Vic' quod assumptis secum quatuor de discretioribus & leg' militibus Com' sui in propria persona sua accederet ad Nicholaum de Segrave, & ipsum in presentia prædictorum militum summon' & ex parte domini regis firmiter ei injungeret quod esset coram domino Rege in proximo Parliament' suo apud Westm' in primo adventu domini Regis ibidem ad audiendam voluntatem ipsius domini Regis super hiis, quæ tunc ibidem proponere intenderet vers' eum, & ad faciendum & recipiendum ulterius quod curia domini Regis consideraret in præmissis. Et Vic' modo mandavit quod assumptis secum Thoma Wale, Waltero filio Roberti de

de Daventry, Roberto de Gray de Wollaston, & Radulpho de Normavill quatuor milit', &c. in propria persona sua accessit apud Stowe ad manerium predicti Nicholai, & in presentia eorundem militum summon' predictum Nicholaum, & ei firmiter injunxit quod esset coram Domino Rege in isto Parlamento nunc juxta formam & tenorem mandati præd', &c.

Almaricus de Sancto Amando, Magister Johannes de Sancto Amando, Willielmus de monte acuto, Richardus Atteham Constabularius castri Oxon', Rich. de Harle, Thomas de Carleton capellanus, Johannes de Ros, Johannes de Trenbrigg, Willielmus Attewarde frater ejus, & Philippus de Wigenton attachiat' fuerunt per Vic' in castro Oxon' per præcept' Domini Regis responsur' eidem Domino Regi in Parlamento suo in Crastino Sancti Mathei Apostoli Anno regni sui xxxiiij. super quibusdam criminibus & transgressionibus infra scriptis, & inde per manucaptionem sufficient' adornat' coram ipso Domino Rege hic ad hunc diem, scilicet a die Pasche in xv dies, &c.

¶ A Writ might be directed to the party himself, when any complaint was made against him, De injuriis, gravaminibus, aut molestationibus, to appear in his proper person before the King and his Council. As for example :

Dominus Rex mandavit breve suum Roberto de Burghersh in hæc verba. Edwardus Dei gratia, &c. Dilecto & fideli suo Roberto de Burghersh Constabular' castri sui Dover & custod. suo quinque portuum, salutem. Quia dilectus nobis in Christo Abbas de Faversham & Robertus de Gurne ballivus suus ejusdem ville coram concilio nostro apud Eborum existent' de diversis injuriis, gravaminibus & molestationibus eis per vos voluntar' & absq; causa rationabili multipliciter illatis graves querimonias deposuerunt, petentes instanter ut eis super hoc fieri faceremus remedium opportunum : propter quod dedimus eis diem coram nobis & concilio nostro a die Pasche in xv dies, &c. ad querelas suas predictas tunc ostendend', & ad faciend' super hoc ulterius & recipiend' quod Justitia suaderet : Vobis mandamus, quod in propria persona vestra sitis coram nobis & concilio nostro ad diem predict' præfatis Abbati & ballivis suis super præmissis respons. factur' & receptur' quod curia nostra consideraverit in hac parte, & ab injuriis, gravaminibus, molestationibus & distractionibus indebitis præfatis Abbati & ballivis suis interim inferendis penitus desistendo. Et habeatis ibi hoc breve. Teste meipso apud Linliscum xxx die Januarii, Anno Regni nostri xxx. Virtute cujus brevis predictus Robertus venit, & breve illud protulit ad diem in eodem contentum. Et predictus Abbas venit & querelas suas protulit in quodam rotulo scriptas, & quas in curia hic querelando ostendit & legere fecit, de quibus prima est hæc, &c.

How they which absent themselves shall be proceeded withall, Vide 50 E.3. nu.37. Adam Buries case, 2 parte Patent, 21 R. 2. nu. 15, 16. Rot.Par. 17 R.2. nu.28. 11 H. 4. nu. 37, 38. 15 H. 6. nu. 4. 33 H.6. fo.17. Sir John Pilkingtons case.

And where by order of Law a man cannot be attainted of High Treason, unless the offence be in Law High Treason, he ought not to be attainted by general words of High Treason by Authority of Parliament (as sometime hath been used) but the High Treason ought to be specially expressed, saying that the Court of Parliament is the highest and most honourable Court of Justice, and ought (as hath been said) give example to inferiour Courts.

There was an Act of Parliament made in the 11 year of King H.7. which had a fair flattering preamble, pretending to avoid divers mischiefs, which were, 1. To the high displeasure of Almighty God. 2. The great let of the

Placita coram domino Rege, Paschi 33 E.1. Rot.19. Oxon.

Placita coram Rege apud Cantuar' de Termino Pasche. Anno regni regis E.1.30. Confimile breve ubi supra eidem Roberto de Burghersh ad festum Majoris & Baronum quinque portuum.

25 H.8. cap.1.a. Eliz. Barton, and others. And see the Act of the Attainder of the Lord Cromwell, Anno 32 H.8. ubi supra.

A mischievous Act with a flattering Preamble in 11 H.7

Common Law, and 3. The great let of the Wealth of this Land: And the Purview of that Act tended in the execution contrary, ex diametro, viz. to the high displeasure of Almighty God, the great let, nay the utter subversion of the Common Law, and the great let of the Wealth of this Land, as hereafter shall manifestly appear. Which Act followeth in these words:

11 H.7.ca.3.

THe King our Sovereign Lord calling to his remembrance, that many good Statutes and Ordinances be made for the punishment of Riots, unlawful Assemblies, reteinders in giving and receiving of Liveries, signs and tokens unlawfully, Extortions, Maintenances, Imbracery, excessive taking of Wages contrary to the Statute of Labourers and Artificers, the use of unlawful Games, inordinate Apparel, and many other great Enormities and Offences, which being committed and done daily contrary to the good Statutes, for many and divers behoofful considerations severally made and ordained, to the displeasure of Almighty God, and the great let of the Common Law, and Wealth of this Land, notwithstanding that generally by the Justices of the Peace in every Shire within this Realm in the open Sessions is given in charge to enquire of many offences committed contrary to divers of the said Statutes, and divers Enquests thereupon there straitly sworn, and charged before the said Justices to enquire of the premisses, and therein to present the troth which any letted to be found by imbracery, maintenance, corruption and favour; by occasion whereof the said Statutes be not, nor cannot be put in due execution: For Reformation whereof, for so much that before this time the said offences, extortions, contempts, and other the premisses might not, nor as yet may be conveniently punished by the due order of the Law, except it were first found and presented by the verdict of twelve men thereto duly sworn, which for the causes afore rehearsed will not find nor yet present the truth: wherefore be it by the advice and assent of the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, and by Authority of the same enacted, ordained and established, that from henceforth as well the Justices of Assize in the open Sessions to be holden afore them, as the Justices of Peace in every County of the said Realm, ^a upon Information for the King before them to be made, have full power and authority ^b by their discretion to hear and determine all offences and contempts committed and done by any person or persons against the form, Ordinance and effect of ^c any Statute made and not repealed, and that the said Justices upon the said Information have full power and authority to award and make like process against the said offenders and every of them, as they should or might make against such person or persons as been presented and indicted before them of trespass done contrary to the Kings Peace, and the said offender, or offenders duly to punish according to the purport, form and effect of the said Statutes. Also be it enacted by the said authority, that the person which shall give the said information for the King, shall by the discretion of the said Justices content and pay to the said person or persons against whom the said information shall be so given his reasonable costs and damages in that behalf sustained, if that it be tried or found against him, that so giveth or maketh any

^a Upon Information without any indictment.

^b By their discretion, and not secundum legem & consuetudinem Angli. as all proceedings ought to be.

^c Obsolete Statutes and acts and especially such as time had so altered from the original cause of the making thereof, as either they could not at all, or very hardly be observed and kept.

any such information. Provided always, that any such information extend not to treason, murder, or felony, nor to any other offence, wherefore any person shall lose life, or member, nor to lose by nor upon the same information any lands, tenements, goods or chattels to the party making the same information. Provided also, that the said informations shall not extend to any person dwelling in any other Shire, then there, as the said information shall be given or made, saving to every person and persons, Cities, and Towns, all their liberties and franchises to them and every of them of right belonging and appertaining.

But it extended to a Premunire, misprision of Treason.

By pretext of this Law Empson and Dudley did commit upon the Subject unsufferable pressures and oppressions, and therefore this Statute was justly soon after the decease of H. 7. repealed at the next Parliament after his decease, by the Statute of 1 H. 8. cap. 6.

1 H. 8. cap. 6.

A good caveat to Parliaments to leave all causes to be measured by the golden and straight merwand of the Law, and not to the incertain and crooked cord of discretion.

It is not almost credible to foresee, when any Maxim, or Fundamental Law of this Realm is altered (as elsewhere hath been observed) what dangerous inconveniences do follow, which most expressly appeareth by this most unjust and strange Act of 11 H. 7. for hereby not only Empson and Dudley themselves, but such Justices of Peace (corrupt men) as they caused to be authorized, committed most grievous and heavy oppressions and exactions, grinding of the face of the poor Subjects by penal Laws (be they never so obsolete or unfit for the time) by information only without any presentment or trial by Jury being the ancient birthright of the Subject, but to hear and determine the same by their discretion, inflicting such penalty, as the Statutes not repealed imposed: These and other like oppressions and exactions by or by the means of Empson and Dudley and their instruments, brought infinite treasures to the Kings Cofers, whereof the King himself in the end with great grief and compunction repented, as in * another place we have observed.

See the 2. part of the Institutes W. 1 c. 26. See the Preface to the 4. part of the Reports. The dangers ensuing by alteration of any of the Maxims of the Law.

* In the Chapter of the Court of Wards and Liveries.

This Statute of 11 H. 7. we have recited, and shewed the just inconveniences thereof, to the end, that the like should never hereafter be attempted in any Court of Parliament. And that others might avoid the fearful end of those two time-servers, Empson and Dudley. Qui eorum vestigia insistant, eorum exitus perhorrescant.

See the Statute of 8 E. 4. c. 2. the Statute of Liveries, an Information, &c. by the discretion of the Judges to stand as an original, &c. This Act is deservedly repealed.

Vide 12 R. 2. cap. 13. Punishment by discretion, &c. Vide 5 H. 4. cap. 6. 8. See the * Commission of Sewers. Discretion ought to be thus described. Discretio est discernere per legem quid sit justum. And this description is proved by the Common Law of the land, for when a Jury do doubt of the Law, and desire to do that which is just, they find the special matter, and the entry is, Et super tota materia, &c. petunt discretionem Justiciariorum, and sometime, advisamentum & discretionem Justiciariorum in premissis, &c. that is, they desire that the Judges would discern by Law what is just, and give judgment accordingly.

* Lib. 5. fol. 100. Rooks case. Lib. 10. fol. 128. &c.

Pl. Com. 318. Barnards case.

Acts against the power of the Parliament subsequent bind not.

1 H. 4. nu. 144.
21 R. 2. nu. 20. repealed by 1 H. 4. c. 3. 1 H. 4. nu. 48.
Vid. 7 H. 4. nu. 37.

An Article of the Statute made in 11 R. 2. c. 5. is that no person should attempt to revoke any Ordinance then made, is repealed, for that such restraint is against the jurisdiction and power of the Parliament, the liberty of the subject, and unreasonable. And likewise the last Will and Testament of King R. 2. under the Great Seal, Privy Seal, and Privy Signet, whereby he devised certain money, treasure, &c. to his successors upon condition to observe all the Acts and orders at the Parliament holden in Anno 21 of his Reign, was holden unjust and unlawful, for that it restrained the Sovereign liberty of the King his Successors.

21 R. 2. cap. 16.
21 R. 2. nu. 44.

Sundry Lords of Parliament (but no Bishops) or six of them, and certain Knights of Shires of the Commons or three of them are authorized by Authority of Parliament to examine, answer and plainly determine all the Petitions exhibited in that Parliament, and the matters contained in the same by their good advice and discretion, &c. The high power of a Parliament to be committed to a few is holden to be against the dignity of a Parliament, and that no such Commission ought to be granted.

2 H. 4. c. 22. Vide
21 R. 2. nu. 44.

An Act in 11 R. 2. c. 3. that no man against whom any judgment, or forfeiture was given should sue for pardon or grace, &c. was holden to be unreasonable without example, and against the Law and custom of Parliament, and therefore that branch by Authority of Parliament was annihilated, and made void.

26 H. 8. ca. 1. Acts of Parliament ought to be plainly, and clearly, and not cunningly and darkly penned, specially in criminal causes.

Also I find that in times past the Houses of Parliament have not been clearly dealt withal, but by cunning artifice of words utterly deceived, and that in cases of greatest moment, even in case of High Treason, as taking one example for a warning in like cases hereafter.

* 26 H. 8. cap. 1.
* 26 H. 8. c. 13.
a By word, &c. this by construction refers to the 2. clause.
b Shadowed with the Queen or Prince.
c Deprive, an obscure word.
d Note this word [Title] in the former Act.
e Parker B. of Cant. Lib. de Antiquitate Brit. Ecclesie. Clerus animo toto obstupuit, nondum enim quid sibi hic novus vellet titulus, aut quosum tenderet, prospexit, &c.
f But this Act lived not long, for twice it was repealed, viz. by 1 E. 6. c. 12. & 1 Mar. c. 1.
g What qualities Laws ought to have.
h Isidor. 2 Erymol.

King H. 8. after the Clergy of England had in their Convocations acknowledged him Supreme Head of the Church of England, thought it no difficult matter to have the same corroborated and confirmed by Authority of Parliament, but withal secretly and earnestly desired that the impugnors and deniers thereof, though it were but by word, might incur the offence of High Treason, and finding the one, that is, the acknowledgment of his Supremacy likely to have good passage, and having little hope upon that which he found to effect the other concerning High Treason, sought to have it pass in some other Act by words closely couched, though the former Act of Supremacy had been the proper place. * And therefore in the Act of recognition of his Supremacy it is enacted, that he should have annexed and united to the Crown of this Realm the Title and Style thereof: * and afterwards towards the end of the Parliament, a bill was preferred whereby many offences be High Treason, and thereby it is enacted, That if any person or persons by a word or writing, 1. Practise or attempt any bodily harm to the King, the b Queen, or their Heirs apparent, 2. Or to c deprive them or any of them, of their dignity, d title, or name of their Royal Estates, 3. Or that the King should be an e Heretique, Schismaticque, Tyrant, Infidel or Usurper of the Crown, &c. that every such person so offending should be adjudged Traytors, &c. So as now by this latter Act, he that by word or writing attempts to deprive the King of the Title of his Royal Estate is a Traytor, but the former Act had annexed to the Crown the Title of the style of Supremacy, and therefore he that should by word or writing attempt to deprive the King thereof should be a Traytor. And f upon this Law of 26 H. 8. c. 13. for denying of the Kings Supremacy divers suffered death as in case of High Treason, whereas all Laws, especially penal, and principally those that are penal in the highest degree g ought to be so plainly and perspicuously penned, as every Member of both Houses may understand the same, and according to his knowledge and conscience give his voice. h Erit autem lex honesta, justa, possibilis, secundum naturam & secundum consuetudinem patriæ, temporisque conveniens, necessaria & utilis, manifesta quoque, ne aliquid per obscuritatem incautum cap-
tione

tione contradat, nullo privato commodo, sed pro communi civium utilitate conscripta, ideo in ipsa constitutione ista consideranda sunt, quia cum leges institutæ fuerint non erit liberum arbitrium judicare de ipsis, sed oportebit judicare secundum ipsas, which be excellent rules for all Parliaments to follow. But the Statute of 5 Eliz. c. 1. hath concerning the Supremacy dealt plainly and perspicuously as by the same appeareth.

§ Eliz. cap. 1.
* Exod. 4. 16. Tu
i. Moses eris ei, i.
Aaron, in his qua

ad Deum pertinent, &c. Exod. 32. 15, 16. Moses custos utriusque tabula. Numb. 10. 1, 2. Moses custos utriusque t. b. e. Joshua 24. 1. Congregavit Joshua, &c. 28. dimisit. 1 Chron. 15. 4. 1 Chron. 16. 43. Rex David. 2 Chron. 5. 2. Rex Solomon: 2 Chron. 29. 15. &c. Ezekias. Nota. 1 Sam. 15. 17. Et ait Samuel ad Saul, nonne cum parvulus esses caput in tribubus factus es? And the Tribe of Levi was one. 1 Maccab. 14. 4. See hereafter, cap. 74.

And albeit it appeareth by these examples, and many other that might be brought, what transcendent power and authority this Court of Parliament hath, yet though divers Parliaments have attempted to bar, restrain, suspend, qualify, or make void subsequent Parliaments, yet could they never effect it, for the latter Parliament hath ever power to abrogate, suspend, qualify, explain, or make void the former in the whole or in any part thereof, notwithstanding any words of restraint, prohibition, or penalty in the former: for it is a Maxim in the Law of the Parliament, Quod leges posteriores priores contrarias abrogant.

Subsequent Parliaments cannot be restrained by the former. 43 E. 3. c. 2. 11 H. 7. c. 1. 28 H. 8. c. 17. 1 E. 6. ca. 11. Lib. 4. fol. 46. the B. of Cant. case.

Acts of Parliament enrolled in other Courts.

For the better observation of any Act of Parliament enacted for the Commonwealth, or of a Petition of Right, or Judgment in Parliament, or the like, and to encourage the Judges that the same may be duly executed, the same may be enrolled in the Courts of Justice in this manner. The tenor of the Record must be removed into the Chancery by Writ of Certiorari, and delivered into the Kings Bench by the hands of the Chancelor or Lord Keeper, and sent by Mittimus to the Court of Common pleas, and by like Mittimus into the Exchequer, and the King by his Writ may command any Court to observe and firmly to keep such an Act of Parliament, as it appeareth by these two precedents. Ex Rotulo Claus. An. 28 E. 1. m. 2. Dors. Rex Thesaurar & Baronibus suis de Scaccari Salutem. Quia volumus quod Magna Carta Domini Henrici quondam Regis Angliæ patris nostri delibetibus Angliæ quam confirmavimus & etiam innovavimus in omnibus & singulis articulis suis firmiter & inviolabiliter observetur. Vobis mandamus quod Cartam prædictam in omnibus & singulis suis articulis quantum in vobis est coram vobis in dicto Scaccario observari faciatis firmiter & teneri. T. R. apud Dunfres 23 die Octobris.

Int. Placita Parl. 18 E. 1. Rot. 18. Ibid. 20 E. 1. Magnum Placitum int. Com. Gloc' & Com. Heref. & Essex irr. Rot. Claus. An. 28 E. 1. in Dors. irr. le Magna Carta. Pasch. 33 E. 1. Rot. Par. Nich. Seagraves case. Rot. 22 Tr. 12 E. 2. Rot. 60. de irr. Petition in Parliament, at banche le Roy.

Rex Justic' suis de Banco Salutem: Cum in alleviationem gravaminum quæ populus Regni nostri occasione guerrarum hæcenus toleravit, ac in emendationem status ejusdem populi, nec non ut ex hoc se exhibeat ad nostra servicia promptiorem, nobisque in agendis nostris libentius subsidium faciat in futurum, quosdam articulos eidem populo plurimum (annuente Domino) profuturos de gratia nostra speciali duxerimus concedendos. Vobis mandamus quod dictos articulos quos vobis mittimus sigillo nostro consignatos coram vobis in banco prædicto quantum in vobis est juxta vim, formam & effectum eorundem observari faciatis firmiter & teneri. T. R. apud Dunfres 30 die Octobris.

Every Member of the Parliament ought to come.

Every Lord Spiritual and Temporal, and every Knight, Citizen and Burghs shall upon Summons come to the Parliament, except he can reasonably, and honestly excuse himself, or else he shall be amerced, &c. that is, respectively, a Lord by the Lords, and one of the Commons by the Commons.

By the Statute of 6 H. 8. c. 16. no Knight, Citizen or Burghs of the House of Commons shall depart from the Parliament without licence of the Speaker and Commons, the same to be entered of record in the Book of the Clerk of the Parliament, upon pain to lose their wages.

5 R. 2. Stat. 2. c. 4. Rot. Par. 31 H. 6. nu. 46. fines were set, &c. If any of the Lords or Commons come not, &c. they shall be fined.

Vid. 3 E. 18. sup.
If any of the
Lords or Com-
mons depart, &c.
they shall be fined
1 & 2 Ph. & Mar.
Rot. 48. ut sup.
* 5 R. 1. Stat. 2. c. 4.

If a Lord depart from Parliament without licence, it is an offence done out of the Parliament, and is finable by the Lords: and so it is of a Member of the House of Commons, he may be fined by the House of Commons. Vide 1 & 2 Ph. & Mar. coram Rege. Rot. 48. divers informations by the Attorney General for departing without licence, ut supra.

* The punishment of Sheriffs for their negligence in returning of Writs, or for leaving out of their returns any City or Borough which ought to send Citizens and Burgesses.

Advice concerning new and plausible projects and offers in Parliament.

See before pag. 14.
Rot. Par. 13 E. 3.

When any plausible project is made in Parliament to draw the Lords and Commons to assent to any Act (especially in matters of weight and importance) if both Houses do give upon the matter projected and promised their consent, it shall be most necessary, they being trusted for the Commonwealth, to have the matter projected and promised (which moved the Houses to consent) to be established in the same Act, lest the benefit of the Act be taken, and the matter projected and promised never performed, and so the Houses of Parliament perform not the trust reposed in them. As it fell out (taking one example for many) in the Reign of H. 8. On the Kings behalf the Members of both Houses were informed in Parliament, that no King nor Kingdom was safe, but where the King had three abilities. 1. To live of his own, and able to defend his Kingdom upon any sudden invasion or insurrection. 2. To aid his confederates, otherwise they would never assist him. 3. To reward his well deserving servants. Now the project was, that if the Parliament would give unto him all the Abbies, Priories, Friories, Pinneries, and other Monasteries, that for ever in time then to come, he would take order that the same should not be converted to private use: But first, that his Exchequer for the purposes aforesaid should be enriched. Secondly, The Kingdom strengthened by a continual maintenance of 40 thousand well trained souldiers with skilful Captains and Commanders. Thirdly, For the benefit and ease of the Subject, who never afterwards (as was projected) in any time to come should be charged with Subsidies, Fifteenths, Loans, or other common aids. Fourthly, Lest the honour of the Realm should receive any diminution of honour by the dissolution of the said Monasteries, there being 29 Lords of Parliament of the Abbots and Priors (that held of the King per Baroniam, whereof more in the next leaf) that the King would create a number of Nobles, which we omit. The said Monasteries were given to the King by authority of divers Acts of Parliament, but no provision was therein made for the said project, or any part thereof; * only ad faciend' populum these possessions were given to the King his heirs and successors to do and use therewith his and their own wills, To the pleasure of Almighty God, and the honour and profit of the Realm.

27 H. 8. de mona-
stries, & 31 H. 8.
c. 13. 32 H. 8. c. 14.
* 27 H. 8. cap. 28.

32 H. 8. c. 23. 50.

34 H. 8. c. 16: & 27.
37 H. 8. cap. 24.

Now observe the Catastrophe; in the same Parliament of 32 H. 8. when the great and opulent Priory of Saint Johns of Jerusalem was given to the King, he demanded and had a Subsidy both of the Clergy and Laity. And the like he had in 34 H. 8. and in 37 H. 8. he had another Subsidy. And since the dissolution of the said Monasteries he exacted divers loans, and against Law received the same.

Whom the King may call to the Lords House of Parliament.

Rot. Claus. In dorf.
10 H. 7. 20 Septeb.
Writs to divers
ad ordinem militie
de Balneo suscipiend'
juxta antiquam
consuetudinem in
creatione usitatam.

If the King by his Writ calleth any Knight or Esquire to be a Lord of the Parliament, he cannot refuse to serve the King there in communi illo Concilio, for the good of his Country. But if the King had called an * Abbot, Prior, or other regular Prelate by Writ to the Parliament to the Common Council of the Realm, if he held not of the King per Baroniam, he might refuse to serve in

* Of regular Prelates that hold per Baroniam.

Parliament

Parliament, because quoad secularia, he was mortuus in lege, and therefore not capable to have place and voice in Parliament, unless he did hold per Baroniam, and were to that Common Council called by Writ, which made him capable; and though such a Prelat Regular had been often called by Writ, and had de facto had place and voice in Parliament, yet if in rei veritate he held not per Baroniam, he ought to be discharged of that service, and to sit in Parliament no more.

a For that the Abby of Leicester was founded by Robert Fitz Robert Earl of Leicester (albeit the Patronage came to the Crown by the forfeiture of Simon de Mountford Earl of Leic.) yet being a subjects foundation, it could not be holden per Baroniam, and therefore the Abbot had no capacity to be called to the Parliament, and thereupon the King did grant, quod idem Abbas & successores sui de veniendo ad Parliamenta & concilia nostra vel hæredum nostrorum quieti sint & exonerati imperpetuum.

b De jure & consuetudine Angliæ ad Archidiaconatum Cantuariensem, &c. Abbates, Priores, aliosq; Prælatos quoscunque per Baroniam de domino Rege tenentes pertinet in Parliamentis regii quibuscunque ut Pares regni prædicti personaliter interesse, ibiq; de regni negotiis ac aliis tractari consuetis cum cæteris dicti regni Paribus ac aliis ibidem jus interessendi habentibus consulere & tractare, ordinare, statuere, & diffinire, ac cætera facere quæ Parliamenti tempore ibid. immunit facienda.

No man ought to sit in that High Court of Parliament, but he that hath right to sit there: for it is not only a personal offence in him that sitteth there without Authority, but a publick offence to the Court of Parliament, and consequently to the whole Realm. But all the cases abovesaid, and others that might be remembered touching this point, as little Rivers do flow from the fountain of Modus tenendi Parliamentum, where it is said; Ad Parliamentum summoneri & venire debent ratione tenuræ suæ omnes singuli Archiepiscopi, Episcopi, Abbates, Priores, & alii majores cleri qui tenent per comitatum vel baroniam ratione hujusmodi tenuræ, & nulli minores, nisi eorum præsentia necessaria vel utilis reputetur, &c.

One rare and strange creation of a Lord regular of Parliament we cannot pass over, which was, That King H.8. in the fifth year of his Reign, by his Letters Patents under the Great Seal, did grant unto Richard Banham Abbot of Tavestock in the County of Devon, being of his Patronage, and to the successors of the said Abbot, ut eorum quilibet, qui pro tempore ibidem fuerit Abbas, sit & erit unus de spiritualibus & religiosis dominis Parliamenti nostri, hæredum & successorum nostrorum, gaudend' honore, privilegio & libertatibus ejusdem.

By that which hath been said, it appeareth that this creation of a regular Lord of Parliament was void, for that the Abbot was neither Baro, nor had Baroniam, &c. And if the King might create Abbots or Priors Lords of Parliament in this manner, by the same reason he might create Deans and Archdeacons Lords of Parliament, which without question he cannot.

By the Act of Parliament of 10 H.2. called the Assise of Clarendon, it is declared, Ut pars consuetudinum & libertatum antecessorum regis, viz. Henrici primi & aliorum, quæ observari debent in regno & ab omnibus teneri, viz. Archiepiscopi, Episcopi, & universæ personæ regni, qui de rege tenent in capite, habeant possessiones suas de rege sicut baroniam, & inde respondeant Justiciariis & Ministris regis, & sequantur & faciant omnes consuetudines regias, & sicut cæteri barones debent interesse judiciis Curie regis cum baronibus, quousq; perveniatur * ad diminutionem membrorum vel ad mortem. So as by this Act a tenure of the King in chief was in equipage with a Barony.

And King John by his great Charter of liberties made Anno 17. of his Reign, granteth, Quod faciemus summoneri Archiepiscopos, Episcopos, Abbates, Comites, & Majores Barones regni singulatim per literas nostras. Out of this Clause we are to observe these things: First, that these Barons called here Majores, were Lords of Parliament, and called thereunto by the Kings Writs. Secondly, that they were called Majores comparatibely, and that was in respect

And so it was adjudged in the Parliament at York's An. 12 E.2. in the case of the Abbot of S. James, extra Northamp. Stanf. pl. cor. 153.a. 4 Rot. pat. An. 26. E.3. part 1. m. 22. See Rot. Claus. in dorf. 11 E.3. part 2. m. 11.

Religious que teignent per Barony sont tenus de venir au Parliament. Vid. ibid. 13 E.3. part 2. m. 28. & 1. Rot. pat. 11 R.2. part 1. m. 2. Artic. 34.

Modus tenendi Par. ca. 2.

This is infra explained by the Assise of Clarendon.

10 H.2. cap. 17. Mat. Par. 97. Assisa de Clarendon.

Rot. Parl. 11 & 21 R.2.

Carta libertat. a Rege Johanne Anno 17 regni sui concess. Mat. Par. 343.

* Nota, a Knights fee is the service of a Knight, that is of a man at Arms, or of war. Hereof see the second part of the Instit. cap. de Militibus. 1 E. 2. Inter leges Edw. cap. 21. lb. ca. 9.
* 1 Curiam Baronis Glanv. li. 8. cap. 11. acc.
Bract. li. 3. 154. b.
Camd. Brit. 121.

of others which were called Barones minores, or Nobiles minores, and were Freeholders that hold by Knights Service and Escuage. i. Servitium Scuti, of three sorts, viz. Milites, Armigeri, & Generosi. Knights, Esquires, and Gentlemen, or Gentlemen. These Barones minores were Lords of Mannors, and had not the dignity of Lords, but had Courts of their Freeholders, which to this day are called Court Barons, Curia Baroniar'. Of this Baron it is said in that Law made by King Edward before the Conquest: Barones qui suam habent Curiam de suis hominibus, videant ut sic de eis agant, quatenus erga Deum reatum non incurrant, & regem offendant.

Baro a Bar, Germanica lingua liberum & sui juris significat, 1. which agreeth well with that which hath been said. 2. That Baro major was called Baro major regni. 3. That every greater Baron was feebly summoned by the Kings Writ, which continueth to this day.

The fees of the Knights, Citizens, and Burgeses of Parliament.

First, for the Knight of any County it is 4 s. per diem, and so it hath been time out of mind, which is particularly expressed in many Records, but let us take one in hæc verba. Johannes Shordich unus militum comitatus Middlesex venientium ad Parliamentum tent' apud Westm in C'ro. Animarum ultim' præterit' habet allocationem 4 li. & 4 s. pro 21 diebus pro expensis suis veniendo ad Parliament' prædict' ibid. morando, & exinde ad propria redeundo, capiend' per diem 4 s. Teste Rege apud Westm 24 die Novemb. Anno 46. Every Citizen and Burgess is to have 2 s. per diem, ut supra, mutatis mutandis.

a Nota the Writ De expensis militum, &c. doth comprehend the sum according to the abovesaid computation, and a commandment to the Sheriff to levy the same, b De communitate comitatus prædict' tam infra libertates, quam extra. (Civitatibus & Burgis de quibus cives & burgeses ad Parliamentum nostrum, &c. venerunt duptaxat exceptis.) The like Writs to the Sheriffs De expensis civium & Burgesium, to levy the same in Cities and Boroughs.

c An. 1 R. 2. nu. 11. the Commons petitioned in Parliament, that all persons having Lay fee might contribute to the charge of the Knights, and to all tallages. The King answered [The Lords of the Realm will not lose their old liberties,] Note the Writ is De communitate.

d Also there is a Writ in the Register De expensis militis non levandis ab hominibus de antiquo dnico, nec ab natis. e Other discharges De expensis militum.

f For the wages of the Knights of the Shire of Cambridge see the Statute of 34 H. 8. cap. 24. Confimile pro Insula de Ely, &c.

g H. 4. An. 14. of his Reign summoned a Parliament C'ro Purificationis, and he deceased 20 Martii following, so as the Parliament was dissolved by his decease. Thereupon it was a question, whether the Knights and Burgeses should have their wages, seeing nothing passed in that Parliament. And it was resolved, that if upon view of the Kings Records any like presidents may be found, allowances of their fees shall be made. i Also the Clergy were contributory by reason of their Benefices to the expences of the procurators of the Clergy.

k But Chaplains which are Masters of the Chancery and attendants at the Parliament, shall not be contributory by reason of their Benefices to the expences of the Clergy, as by the Register ubi supra appears: and this was by an Act of Parliament made in * 4 E. 3. which in general words is recited in the Writ directed to the Archdeacon for their discharge.

h Nota, for presidents. i Regist. 261. F. N. B. 229. a. k Vid. supra pa. 4. 5. * Parl. An. 4 E. 3. apud Winton whereof there is no Roll now remaining.

Who be eligible to be a Knight, Citizen, or Burgess of Parliament.

See the Stat. of 5 R. 2. cap. 4. Vid. sup. pa. 4. 5. Rot. brev. 7 R. 2.

A Knight Banneret being no Lord of Parliament is eligible to be Knight, Citizen or Burgess of the House of Commons being under the degree of a Baron, who is of the lowest degree of the Lords House. But Thomas Camois was not only,

only a Knight Banneret, but a Baron and Lord of Parliament in Anno 7 R. 2. and served in that Parliament as a Baron of the Realm, and therefore as of a thing notorious he was discharged. One under the age of 21 years is not eligible, neither can any Lord of Parliament sit there until he be of the full age of 21 years.

Dors. Claus. 7 R. 2. m. 10. & 37.

An Alien cannot be elected of the Parliament, because he is not the Kings liege subject, and so it is albeit he be made Denizen by Letters Patents, &c. for thereby he is made quasi, seu tanquam ligeus; but that will not serve, for he must be ligeus revera, and not quasi, &c. And we have had such an one chosen and disallowed by the House of Commons, because such a person can hold no place of Judicature: but if an Alien be naturalized by Parliament, then he is eligible to this or any other place of Judicature.

Vi. Stat. de 1 Mar. cap.

But it is objected that Gilbert de Umphrevill Earl of Andgos in Scotland, was called by the Kings Writ to the Parliament in 39 E. 3. by the name of Gilbert Earl of Andgos: and in a Writ of Ravishment of Ward brought against him, by the name of Gilbert Umphrevill Chivaler, he pleaded to the Writ that he was Earl of Andgos not named in the Writ: and for that he was summoned to every Parliament by the name of the Earl of Andgos, and the King sent to him a Writ of Parliament under the Great Seal, as to a Peer of the land: by judgment of the Court the Writ did abate. We have searched for the truth of this case, and do find it in the Plea Rolls in this manner.

39 E. 3. 35, 36.

Richard de Umphrevill Baron of Prodhowe and Redesdale in the County of Northumberland, had issue Gilbert, who after the decease of his Father was a Baron of this Realm, and in the Reign of H. 3. married with Mawde daughter and heir of the Earl of Andgos in Scotland, who by her had issue Gilbert, who was Earl of Andgos as heir to his Mother, and Baron of Prodhowe and Redesdale as heir to his Father: he sat in Parliament upon summons by Writ in 27 E. 1. 28 E. 1. 30 E. 1. 35 E. 1. 1 E. 2. and 2 E. 2. by the name of Gilbert Earl of Andgos. Robert his son sat in Parliament, Anno 12 E. 2. by the same name of Dignity, and so forth, all E. the seconds Reign. And Gilbert his Son sat in Parliament in 6 E. 3. and in every Parliament following until, and in 4 R. 2. by the same name. And in Gilbert his Son (who deceased in Anno 15 H. 6.) that surname of Umphrevill ceased. Hereby it appeareth that the said Richard Umphrevill and his posterity, from whence soever they originally descended, were liege Englishmen: for if they had been Aliens, they could not have enjoyed the Lordships of Prodhowe, Otterborne, Harbottle, and Redesdale in England, nor the Barony of Kime in Lancashire, which the two last Gilberts enjoyed. And note, the Book in 39 E. 3. concludeth, that Gilbert Umphrevill was summoned to the Parliament under the Great Seal, Come un Pier del Realme.

All this doth appear in the Rolls of Parliament in all the several times.

These two were commonly called the Earls of Kime.

A Bishop elect may sit in Parliament as a Lord thereof.

Hil. 18 E. 1. fo. 4. nu. 105.

Of Knights, Citizens and Burgeses of Parliament.

None of the Judges of the Kings Bench or Common Pleas, or Barons of the Exchequer that have judicial places can be chosen Knight, Citizen or Burgeses of Parliament, as it is now holden, because they be assistants in the Lords House; and yet you may read in the * Parliament Roll, An. 31 H. 6. that Thorp Baron of the Exchequer was Speaker of the Parliament. But any that have judicial places in the Court of Wards, Court of Duchy, or other Courts Ecclesiastical or Civil, being no Lord of Parliament are eligible.

* Rot. Par. 31 H. 6. nu. 26, 27, 28.

Note, he could not be Speaker unless he were Knight of the Shire, &c. in the book of Burgeses of the House of Commons.

None of the Clergy, though he be of the lowest Order, are eligible to be Knight, Citizen, or Burgeses of Parliament, because they are of another body, viz. of the Convocation.

a Alexan. Nowels caic, who after was Dean of Pauls being a Prebend. 1 Mar.

A man attainted of Treason or Felony, &c. is not eligible: for concerning the election of two Knights, the words of the Writ be, Duos milites gladiis cinctos magis idoneos, & discretos eligi fac. And for the election of Citizens and Burgeses

the words of the Writ he, Duos, &c. de discretioribus & magis sufficientibus, which they cannot be said to be when they are attainted of Treason or felony, &c. Mayors and Bailiffs of Towns Corporate are eligible against the opinion in Brook, Anno 38 H.8. tit. Parliament.

Any of the profession of the Common Law, which is in practise of the same, is eligible. For he which is eligible of common right cannot be disabled by the said Ordinance in Parliament in the Lords House in 46 E. 3. unless it had been by Act of Parliament: And if it had been by Authority of Parliament, yet had the same been abrogated by the said Statutes of 5 R.2. Stat. 2. cap. 2. and 7 H. 4. cap. 15. which are general Laws without any exception, as hath been said.

Rot. Par. 46 E. 3.
nu. 10.
5 R. 2. Stat. 2. ca. 4.
7 H. 4. ca. 15.

Rot. Claus. Anno
6 H. 4.
See before pa. 10.
4 Petty Acts passed at this Parliament of little or no effect, as by the same appears.
Rot. Parl. 50 E. 3.
nu. 83. an Ordinance that no Sheriff should be Justice of Peace, &c. bound nor the subject until a statute made 1 Mar. c. 8.

At a Parliament holden at Coventry Anno 6 H. 4. the Parliament was summoned by Writ (and by colour of the said Ordinance) it was forbidden, that no Lawyer should be chosen Knight, Citizen or Burgess, by reason whereof this Parliament was fruitless, and never a good Law made thereat, and therefore these Writs were against Law, Lawyers ever since (for the great and good service of the Commonwealth) have been eligible: for, as it hath been said, the Writs of Parliament cannot be altered without an Act of Parliament: and albeit the prohibitory clause had been inserted in the Writ, yet being against Law, Lawyers were of right eligible, and might have been elected Knight, Citizen or Burgess in that Parliament of 6 H. 4.

By special order of the House of Commons the Attorney General is not eligible to be a Member of the House of Commons.

At the Parliament holden 1 Caroli Regis, the Sheriff for the County of Buckingham was chosen Knight for the County of Norff. and returned into the Chancery: and having a Subpoena out of the Chancery served upon him as the suit of the Lady C. pendente Parlamento, upon motion, he had the privilege of Parliament allowed unto him by the Judgment of the whole House of Commons.

Who shall be Electors of Knights, Citizens and Burgesses, how and when: and of Elections.

Who shall be electors, and who shall be chosen, and the time, place, and manner of Election, and therein the duty of the Sheriff, you may read in the positive Laws of 7 H. 4. cap. 15. 11 H. 4. cap. 1. 1 H. 5. cap. 1. 8 H. 6. cap. 7. 10 H. 6. cap. 2. 23 H. 6. ca. 15. 6 H. 6. ca. 4. &c. which need not here to be particularly rehearsed.

5 Eliz. cap. 1.

No Knight, Citizen or Burgess, can sit in Parliament before he hath taken the Oath of Supremacy.

Vide Rot. Claus. 7 R. 2. 7 Octobris in Dorf. Sir Thomas Moreville elected one of the Knights for the County of Hertford, Ibid. James Berners chosen to serve in Parliament, and both of them discharged. See the Record.

No election can be made of any Knight of the Shire but between 8 and 11 of the clock in the forenoon: but if the election be begun within that time, and cannot be determined within those hours, the election may be made after.

For the election of the Knights, if the party or the Freeholders demand the Poll, the Sheriff cannot deny the scrutiny, for he cannot discern who be Freeholders by the view: and though the party would waive the Poll, yet the Sheriff must proceed in the scrutiny.

If the King doth newly incorporate an ancient Borough (which sent Burgesses to the Parliament) and granteth that certain selected Burgesses shall make election of the Burgesses of Parliament, where all the Burgesses elected before, this Charter taketh not the election of the other Burgesses. And so, if a City, &c. hath power to make Ordinances, they cannot make an Ordinance that a less number shall elect Burgesses for the Parliament then made the election before;

before; for free elections of Members of the High Court of Parliament are pro bono publico, and not to be compared to other cases of election of Mayors, Bailiffs, &c. of Corporations, &c.

If one be duly elected Knight, Citizen, or Burgess, and the Sheriff return another, the return must be reformed, and amended by the Sheriff: and he that is duly elected must be inserted: for the election in these cases is the foundation, and not the return. Rot. Parl. 5 H. 4. nu. 38.

By original grant or by custom, a selected number of Burgesses may elect and bind the residue.

Concerning Charters of Exemption.

The King cannot grant a Charter of Exemption to any man to be freed from election of Knight, Citizen, or Burgess of the Parliament (as he may do of some inferior Office or places) because the elections of them ought to be free, and his attendance is for the service of the whole Realm, and for the benefit of the King and his people, and the whole Commonwealth hath an interest therein: and therefore a Charter of exemption that King H. 6. had made to the Citizens of York of exemption in that case, was by Act of Parliament enacted and declared to be void. And though we find some presidents that Lords of Parliament have sued out Charters of exemption from their service in Parliament, yet those Charters are holden to be void: for though they be not eligible, as is aforesaid, yet their service in Parliament is for the whole Realm, and for the benefit of the King and his people, of which service he cannot be exempted by any Letters Patents. And if he hath lascivious phantasm, or be extremely sick, or the like, these be good causes of his excuse in not coming, but no cause of exemption, for he may recover his memory and health &c. So as the said presidents were grants de facto, not de jure: for if the King cannot grant a Charter of exemption from being of the grand Assize in a Writ of right, or of a Jury in an Attaint for the mischief that may follow in those private actions; a fortiori, he cannot grant any exemption to a Lord of Parliament; for his service in Parliament is publick for the whole Realm. But if any Lord of Parliament be so aged, impotent, or sick, as he can not conveniently without great danger travel to the High Court of Parliament, he may have license of the King under the great Seal to be absent from the same during the continuance or protraction thereof: but if the rehearsal be not true, or if he recover his health, so as he become able to travel, he must attend in Parliament. Or without any such license obtained, if he be so aged, impotent, or sick, as is aforesaid, and yet is amerced for his absence, he may reasonably and honestly excuse himself by the Statute of 5 R. 2. Pasc. 3 E. 3. fol. 19. dt. coron. F. 161. 29 H. 6. cap. 3. Rot. pat. 1 part. 11 E. 3. Rot. pat. 4 part. 1 E. 4. m. 15. pro Do. Beuchamp. Rot. pat. 2 E. 4. part. 2. m. 2. pro Dom. Vesey. 39 E. 3. 15. 34 H. 6. 25. 35 H. 6. 42.

After the precept of the Sheriff directed to the City or Borough for making of election, there ought secundum legem & consuetudinem Parliam. to be given a convenient time for the day of the election; and sufficient warning given to the Citizens or Burgesses that have voices, that they may be present: otherwise the election is not good, unless such as have voices do take notice of themselves and be present at the election. 5 R. 2. c. 4. Stat. 2.

Any election or voices given before the precept be read and published, are void, and of no force: for the same electors after the precept read and published may make a new election and alter their voices, secundum legem & consuetudinem Parliamenti.

Thus much have we thought good to set down concerning Knights, Citizens and Burgesses, because much time is spent in Parliament concerning the right of elections, &c. which might more profitably be employed pro bono publico.

Now to treat more in particular (as it hath been much desired) of the Laws, customs, liberties and privileges of this Court of Parliament (which are the very heart-strings of the Commonwealth, whereof we have remembered some: and you may see some few other examples in the margin, too long here to be

2 H. 4. cap. 1. Rot. Parl. 9 H. 4. Indemnity des Seigneurs & Commons. 1 H. 5. nu. 9. cap. 1. 4 H. 8. cap. 8. verif. finem. a general Law. 6 H. 8. c. 6. in the Preamb. See before p. 24 25. * 16 R. 2. Rot. Claus. in dorf. Rot. Parl. 11 R. 2. nu. 7. 1 H. 4. nu. 143. 2 H. 4. nu. 11.

rehearsed) would take up a whole Volume of it self: certain it is, as hath been said, that Curia Parliamenti suis propriis legibus subsistit.

* Rot. Parl. 5 H. 4. nu. 12.
23 H. 6. nu. 45.
27 H. 6. nu. 18.
31 H. 6. nu. 25, 27.
Lamb. inter leges.
Edw. Confessoris, c. 3.
Ad Synodos, ad capitula venientibus, seu summoniti sunt, seu per se quid agendum habuerint, sit summa pax.

All the Justices of England and Barons of the Exchequer are assistants to the Lords to inform them of the Common Law, and thereunto are called severally by Writ. * Neither doth it belong to them (as hath been said) to judge of any Law, custom, or privilege of Parliament. And to say the truth, the Laws, customs, liberties and privileges of Parliament are better to be learned out of the Rolls of Parliament, and other Records, and by presidents and continual experience, then can be expressed by any one mans pen.

Per varios usus legem experientia fecit.
Multa multo exercitamentiis facilius, quam regulis percipies.

Consultations in Parliament for maintenance of the Navy.

Rot. Parl. 45 E. 3. nu. 32.
The decay of the Navy.

In many Parliaments consultations have been had for the maintenance of the Navy of England, and remedies provided against decay of the same: as taking one example for many. In the Parliament holden in An. 45 E. 3. the Commons amongst their petitions do affirm, that the decay of the Navy doth arise by three causes. First, For that sundry mens ships are letted for the King, long before they serve, whereby the owners are driven at their charges to find their Mariners, to their undoing. Secondly, For that Merchants, the nourishers of the Navy, are oft restrained in their shipping, whereby Mariners are driven to seek other trades and livings. Thirdly, For that the Masters of the Kings ships do take up Masters of other ships as good as their selves are, whereby the most of those ships do lie still, and the Mariners enforced to seek new livings: whereof they prayed remedy. To this Petition of Right the Kings royal answer was, That he would provide remedy.

The Kings Navy exceeds all others.

The Kings Navy exceeds all others in the world for three things, viz. beauty, strength and safety. For beauty, they are so many Royal Palaces: for strength (no part of the world having such Iron and Timber as England hath) so many moving Castles and Barbicans: And for safety, they are most defensive walls of the Realm. Amongst the ships of other Nations, they are like Lions amongst silly Beasts, or Falcons amongst fearful fowle.

* Patricius, lib. 5. De institutione Reipublicæ.

In the Reign of Queen Elizabeth (I being then acquainted with this business) there were 33 besides Pinnaces: which so guarded and regarded the navigation of the Merchants, as they had safe vent for their commodities, and trade and traffick flourished. A worthy subject for Parliaments to take into consideration, and to provide remedy as often as need shall require. For navigation, see Gen. 6. 14. Sapient. 14. 6. * Remp. quasi navem existimare debemus, quæ omnium manibus officioq; indiget, &c. A leak in a ship is timely to be repaired: For as it is in the natural body of Man, so it is in the politick body of the Commonwealth. Non morbus in plerisque sed morbi neglecta curatio corpus interficit. And thus much for consultations in Parliament concerning the Navy of England.

Of the Burgeses of Parliament.
About 300 Sessions of Parliament since the Conquest

See the first part of the Institutes, Sect. 164. Verb. [Veigne les Burgeses al Parliament.] And there have been since the Conquest about 300 Sessions of Parliament, whereof divers are not printed.

In perusing over the Rolls of Parliament we find, First, Divers Acts of Parliament in print that are not of Record in the Roll of Parliament. Secondly, Many Acts of Parliament that be in the Rolls of Parliament, and never yet printed. Thirdly, Divers Clauses omitted in the print which are in the Parliament Roll. Fourthly, More in the print then in the Record. Fifthly, Many variances between the print and the Roll. Sixthly, Statutes repealed or disaffirmed, and yet printed, &c. Seventhly, Whole Parliaments omitted out of the print. Eighthly, Whole Parliaments repealed, or a great part.

And of every of these taking some examples: for to handle all at large would require a whole Treatise, which (we having broken the Ice) some good man and lover

lover of his Countrey (we hope) will undertake to wade thozow.

As to the first, These are in print and not of Record. * 20 E. 3. the oath of the Judges. 27 E. 3. c. 4, 5, 6, 7, 8. concerning the Alneger and Galcoign Wines. 37 E. 3. cap. 7. touching silver vessels. 37 E. 3. cap. 19. of Hawks. 2 R. 2. cap. 5. of Jewes. Vid. 11 R. 2. 11. 2 R. 2. cap. 3. of fained guilts. 7 R. 2. cap. 15. against maintenance 9 R. 2. cap. 3. of error and attain. 11 R. 2. cap. 4, 5, & 6. not of Record. 13 R. 2. cap. 11. touching Clothes. 13 R. 2. cap. 19. concerning Salmons. 13 R. 2. cap. 2. touching Pilgrims. 13 R. 2. cap. 15. concerning the Kings Castles and Castles. 14 R. 2. cap. 7. concerning Tin. 17 R. 2. cap. 8. of unlawful Assemblies. 17 R. 2. cap. 9. concerning Salmons. 27 H. 6. cap. 3. touching imployments, &c.

To the first.
* See the 3. part of the Institutes, *De corrupto Iudice.*

As to the second: These Acts of Parliament are of Record, and not in print. An. 11 E. 3. the creation of the D. of Cornwall, &c. by authority of Parliament. 3 R. 2. nu. 39. concerning Justices of Peace, a profitable Law for them. 8 R. 2. nu. 31. concerning the Jurisdiction of the Constable and Marshal. 20 R. 2. concerning the legitimization of the children of John of Gaunt. D. of Lanc. by Kath. Swinford. 5 H. 4. nu. 24. a Commission of Act of Parliament for arraying and mustering of men. 8 H. 4. n. 12. Clergy exempted from arraying and mustering of men. 11 H. 4. n. 28. against Bribery and Briocage in great Officers, Judges, 11 H. 4. nu. 63. concerning Attornies, &c. 6 H. 6. nu. 27. that a Queen of England Dowager, shall not contract her self or marry without the Kings license. 9 H. 6. nu. 25. concerning taxes of Privy Councillors, and other head Officers. And very many others.

To the second.
See the Princes case. lib. 8. fol. 1.

As to the third: In these Acts of Parliament, divers clauses are omitted out of the print, which are in the Parliament Roll. 36 E. 3. cap. 3. in the Act of Purveyors, &c. in the clause of the penalty, the Steward, Treasurer, and Comptroller, are expressly named, but omitted in the print. 2 R. 2. Stat. 2. cap. 4. in confirmation of liberties, &c. saving the Kings regality is omitted. 13 R. 2. cap. 1. concerning presentation of the King, the last clause, concerning ratifications of the King, is omitted. 13 R. 2. cap. 2. touching provisions. 14 R. 2. cap. 4. nu. 9. concerning Regrators of wools, high prices omitted in the print. 17 R. 2. cap. 4. of Wilt, leaveth out Herfordshire. 2 H. 5. cap. 3. nu. 38. concerning enquests. 2 H. 5. c. 1. n. 30. concerning Justices of peace. 9 H. 4. cap. 8. nu. 43. concerning provisions. 8 H. 6. nu. 50. cap. 10. concerning process during the Kings will, omitted in the print.

To the third.

As to the fourth: In these there is more in the print then in the Record. 9 H. 4. ca. 8. nu. 43. touching provisions. 2 H. 5. Stat. 2. cap. 3. nu. 38. touching Jurors, &c.

To the fourth.

The fifth: In these the print vary from the Record in some material thing. Generally in all the Statutes made concerning provisions, or other the usurpations of the Pope, the biting and bitter words are left out in the print. As to take an example of two. V. 38 E. 3. in print. cap. 1, 2, 3, 4. and in the Roll, nu. 9, &c. 3 R. 2. cap. 3. in print. Rol. nu. 37. &c. the Bishops being Lord Chancellors. 9 R. 2. n. 1. the print mistakes the beginning of the Parliament, viz. the Monday after S. Luke, for Friday. 9 H. 4. cap. 2. nu. 26. concerning Attornies, &c. A Roll of Parliament intituled 14 E. 4. where it should be 13 E. 4. 9 H. 5. cap. 2. & 3. printed as perpetual in some Books, where they were to endure but until the next Parliament.

To the fifth.

The sixth: Statutes pretended to be enacted, and after disaffirmed, and yet printed. 5 R. 2. cap. 5. Stat. 2. touching inquiries of Heresies. An. 6 R. 2. nu. 52. disaffirmed by the Commons, for that they protested it was never their meaning to be justified, and to bind themselves and their successors to the Prelates, no more then their ancestors had done before them. Robert Braibroke Bishop of London was then Lord Chancellor. By this and that which follows, it appeareth how necessary it was in those days to have some of the Commons to be (as hath been said) at the ingrossing of the Parliament Rolls, as appeareth Rot. Parl. Anno 6 H. 4. nu. 56. 7 H. 4. nu. 65. &c. & Modo tenend' Parl cap. 8. 2 H. 4. cap.

To the sixth.

Rot. Parl. 11 H. 4.
nu. 12. vide
7 H. 4. nu. 11.

To the seventh.

cap. 15. disavowed by the Commons, and yet the pretended Act printed 2 H. 5. ca. 6. against Preachers, disavowed the next Parliament by the Commons, for that they never assented, and yet the supposed Act printed.

The seventh: Whole Parliaments omitted out of the print, wherein there be many notable things to be observed. An. 3 E. 2. a Parliament holden at Westm. 3 Sept. Dorf. Claus. 2 E. 2. m. 14. & 22. An. 4 E. 2. apud London. 5 E. 2. apud West. 6 E. 2. ib. bis. 7 E. 2. ib. 8 E. 2. apud Eborum. 11 E. 2. apud Westm. 16 E. 2. apud Rippon, & postea apud Eborum. An. 6 E. 3. a Parliament holden at Westminster the Monday after the Feast of S. Gregory. An. 8 E. 3. a Parliament holden at York the day before the Feast of S. Peter in Cathedra. An. 11 E. 3. at Westm. whereat the Prince was created Duke of Cornwall, &c. Anno 13 E. 3. holden at Westm. in 15 Mich. 22 E. 3. at Westm. the Monday next after the week in the midst of Lent. 29 E. 3. a Parliament holden at Westm. the day after S. Martin. 40 E. 3. at West. the Monday after the invention of the Cross. 7 R. 2. at Westm. the Friday after the Feast of S. Mark, &c.

To the eighth.

The eighth: Whole Parliaments repealed and made void by subsequent Parliaments. 1 H. 4. c. 3. repealed. 21 R. 2. which had repealed the Parliament of 11 R. 2. and rebiberth the same. By 39 H. 6. c. 1. a Parliament holden at Coventry An. 38 H. 6. is wholly repealed. Rot. Parl. 12 E. 4. nu. A whole Parliament holden An. 49 H. 6. & readeptionis Regni sui primo, is repealed and reversed. a Vide the Parliament of 15 E. 3. repealed. Rot. Parl. Anno 17 E. 3. nu. 23. For there it is agreed that the Statute of 15 E. 3. shall be utterly repealed, and lose the name of a Statute, as contrary to the Laws and prerogative: and for that some Articles there made are reasonable, it is agreed, that such Articles and others agreed in this Parliament shall be made into a Statute by the advice of the Justices.

a Where the printed book suppose that there was another Parliament in Anno 15 E. 3. whereby the former Statute was repealed, the truth is, the Parliament was holden at Westm. 15 Pasch. An. 17 E. 3.
b Histories sometime explain Records of Parliament.
c Rot. Parl. 10 H. 6. nu. 14.

b Many Records of Parliament can hardly be understood, unless you join thereunto the History of that time. For example: c The Cardinal of Winchester, Uncle to the King, declareth in open Parliament, that he being in Flanders, in his journey to Rome, returned back of his own will to purge himself of a bruit, that he should be a Traitor to the Realm, whereof (no accusation being against him) he was easily purged by the Duke of Glouc. Protector, by the Kings commandment. But add the History thereunto, that the Cardinal having certain of the Kings Jewels in gage, meant to have them brought after him: but these Jewels being arrested and stay'd at Sandwich by the Kings commandment, and the bruit hereof coming to the Cardinals ear (he being therewith exceedingly troubled) for the recovery of them, returned in post to the Parliament. Now after he was purged of the bruit of supposed Treason; touching the said Jewels stay'd at Sandwich to the great hindrance of the Cardinal, as he complained; It was on a motion on his behalf, ordered that the Cardinal should pay to the King Six thousand pound more for them, and lend to the King thirteen thousand pound, which was done.

This appeareth in the same Parliament, nu. 15.

And for a conclusion hereof, and of this Chapter of the High Court of Parliament, it is to be remembred, that by the Statute of 42 E. 3. c. 1. all Statutes are repealed that are against Magna Carta, or Carta de Foresta.

Parliaments in
Scotland.
In Ireland.

See hereafter cap. 75. how and in what manner Parliaments be holden in Scotland. And cap. 77. how and in what manner Parliaments be holden in Ireland, and how Bills shall pass there, never before this time published, as we know.

CAP. II.

Of the Councel Board, or Table.

This is a most noble, honourable, and reverend Assembly of the King and his Privy Council in the Kings Court or Palace : *a* With this Council the King himself doth sit at his pleasure. These Counsellors, like good Sentinels and Watchmen, consult of, and for the *b* publick good, and the honour, defence, safety, and profit of the Realm. A consulendo, secundum excellentiam, it is called the Council Table. *c* Private causes, lest they should hinder the publick, they leave to the Justices of the Kings Courts of Justice, and meddle not with them : they are called Concilium regis privatum, concilium secretum, & continuum concilium regis. *d* The number of them is at the Kings will, but of ancient time there were twelve, or thereabouts. Of the diversity of the Kings several Councils, you may read in the First part of the Institutes, Sect. 164.

See Rot. Pat. 42 E. 3. parte 1. m. 19. de concilio Regis.

11 H. 4. nu. 14. 23. 47. *d* Rot. Par. 50 E. 3. nu. 10. 12. 1 R. 2 nu. 4. Rot. Pat. 1. parte, m. 10. Rot. Parl. 66. 67. 1. part of the Institutes, Sect. 194. Rot. Claus. 16 E. 2. m. 5. in Dorf. Hen. de bello monte bavo de magno & de secreto concilio regis jurat.

King E. 3. would have his Counsellors to have four properties. 1. That he be parvus sui, knowing that he would never be provident for him, that would not be a good husband for himself. 2. That he should not be cupidus rei alienæ, no covetous, nor greedy man, for ei nihil turpe, cui nihil satis. 3. That he should be avarus reipublicæ, covetous for the Kings Treasure and Commonwealth : and 4. That he super omnia sit expertus ; in what place the King shall employ him, that he be expert ; for great offices, are never well managed by Deputy, where the Officer himself is but a Cipher.

To these Counsellors all due Honour and Reverence is to be given, for they are incorporated to the King himself, and bear part of his cares, they are his true Treasurers, and the profitable Instruments of the State. Such Honour was given to Counsellors of State in ancient time, *e* that if one did strike in a Senators or Counsellors House, or elsewhere in his presence, he was fined.

f *See* Vet. Mag. Cart. fo. 51. 2. parte. Hugh Spencer the Father, Lord Spencer Earl of Winchester, and the Kings Chamberlain, and Hugh his Son Earl of Glouc were adjudged in Parliament to be exiled, &c. amongst other Articles, fir were. First, for that they by their evil covin would not suffer the Grandæ of the Realm, nor the Kings good Counsellors to speak with or come near the King, or to give him good Counsel, or that the King might speak with them, but only in the presence or hearing of the said Hugh the Father, and Hugh the Son, or of one of them, and at their will, and according to such things as pleased them. Secondly, for giving evil counsel to the King, not to answer the petitions of the great men and others, but at their pleasure. Thirdly, that they, to attain by their malice and covetousness to the disheritance of the great men of the Realm, and destruction of the people, put out good and covenable Ministers, which had their places by assent, and put in others false and evil of their covin, that they should not cause right to be done. And Sheriffs, Escheators, Constables of Castles, and others in the Offices of the King, not covenable for the King, nor for the people they did make, and caused Justices to be made not Consultants in the Laws of the Land, to hear and determine things touching the great men and people of the Realm, &c. And so, that which sought to be for the maintenance of the

a Rot. Claus. 12 E. 3. parte 2. m. 19. 35 E. 3. fo. 14. Rot. Par. 1 R. 2. part m. 16. 8 H. 4. nu. 76. &c. Rot. Par. 2 H. 6. nu. 15. *b* Pro bono publico.

c 20 E. 3. ca. 1. 25 E. 3. cap. 1. Stat. 4. 42 E. 3. ca. 3. Rot. Par. 1 R. 2. nu. 87. 112. Rot. Par. 7 H. 4. nu. 41.

7 H. 4. 31. 41.

Stanf. 72 F. *Senatores sunt partes corporis regis.* Rot. Par. 3 H. 6. nu. 3.

e Inas ca. 46. *f* Alveredus, c. 15. Hugh Spencer the Father, and Hugh the Son, evil Counsellors.

Magna Carra.

peace, and of good men, and punishment of evil, was turned to the disheritance of the great men, and destruction of the people. Fourthly, that they falsly and maliciously did counsel the King to raise Horse and Arms, &c. in destruction of the good people, against the form of Magna Carta, and so by their evil counsel would have moved War within the Realm, to the destruction of Holy Church, and of the people, for their proper quarrel. Fifthly, for defeating by their evil Counsel that which the King had granted in his Parliament by his good Counsel, by the assent of the Peers of the Land, to the dishonour of the King, and against right and reason. Sixthly, they would not suffer the King to take reasonable fines, &c. upon Alienations, &c. Read the whole.

Hereby it appeareth that one or two ought not to be sole Counsellors, and to make a Monopoly thereof, for true it is that Homer saith,

Homer.

See the Articles
against Cardinal
Woolley, hereafter
cap. Chancery, pa.
Art. 9, 10, 15.

* Utilis sed non
solus.

a Ro. Par. 11 H. 4.
nu. 14. Nota.

Vid. Vet. Mag.

Cart. parte 1.

fo. 165. *juramen-*
tum consiliariorum.

Vide Fleta lib. 1.

ca. 17.

Nota, vide inf. 5.

Haud quaquam poteris tu fortiter omnia solus,
Namque aliis divi bello pollere dederunt,
Huic saltandi artem, voce huic, citharaque canendi.
Inferuitque sagax alii sub pectore magnus
Jupiter ingenium, at multis est * utilis ille.

a The duty of a Privy Counsellor appeareth by his Oath, which consisteth on these Articles or parts.

1. That he shall as far forth as cunning and discretion suffereth, truly, justly and evenly counsel and advise the King in all matters to be commended, treated, and demeaned in the King's Counsel, or by him as the King's Counsellor.

2. Generally in all things that may be to the King's honour and behoof, and to the good of his Realms, Lordships and Subjects, without particularity or exception of persons, not leaving, or eschewing so to do for affection, love, mæd, doubt, or dread of any person or persons.

3. That he shall keep secret the King's Counsel, and all that shall be commended by way of counsel in the same, without that he shall common it, publish it, or discover it by word, writing, or in any otherwise to any person out of the same Counsel, or to any of the same Counsel, if it touch him, or if he be party thereof.

4. That he shall not for gift, mæd, nor good, ne promise of good by him, nor by mean of any other person receive or admit for any promotion, favouring, nor for declaring, letting, or hindring of any matter or thing to be treated or done in the said Counsel.

5. That he shall with all his might and power help and strengthen the King's said Counsel in all that shall be thought to the same Counsel for the universal good of the King and his Land, and for the peace, rest and tranquillity of the same.

6. That he shall withstand any person or persons of what condition, estate or degree they be of, that would by way of feat, attempt, or intend the contrary.

7. And generally that he shall observe, keep and do all that a good and true Counsellor ought to do unto his Sovereign Lord.

By force of this Oath and the Custom of the Realm he is a Privy Counsellor without any Patent or Grant, during the life of the King that maketh choice of him.

It is enacted that all the King's Counsellors, and other head Officers there named shall have yearly out of the Exchequer such fees by way of reward as are there expressed.

Every Privy Counsellor hath a voice and place in the Court of Star-chamber, as in the Chapter of the Court of Star-chamber appeareth.

For the better performance of which Oath, King H. 8. would wish that his Counsellors would commit Simulation, Dissimulation and Partiality to the Porters lodge when they came to sit in Counsel.

Rot. Par. 9 H. 6.
nu. 25.

Of the President of the Council.

There is, and of ancient time hath been a President of the Council, who was sometime called *Principalis consiliarius*, and sometime *Capitalis consiliarius*, Rot.Par. 9 E.2. Comes Lancast' 50 E.3. 1 R.2. 1 pars. Pat. nu.22. 1 H.6. nu.26, 27. Dux Bedf. Rot. Pat. 1 H.6. parte 3. Dux Gloc' Rot. Parl. 10 H.6. nu.9. Dux Gloc'. Sæ Rot. Parl. 11 H.6. nu.19. Rot. Parl. 22 H.6. Dux Eborum Rot. Pat. 13 E.4. part 1. Johannes Ruffel Episcopus Rossen & postea Lincoln Præsidens concilii. Int Record' Curie stellat Johannes Filsher Episcopus Ross. Præsidens concilii 12 H.7.A. 25 H.8. usq; 37 H.8. Carolus Brandon Dux Suff. in libro pacis, Rot. Parl. 1 E.6. Pawlet. In the Journal booke of Parliament. 5 E.6. & 7 E.6. Dux Northumb. 1 & 2 Ph. & Mar. comes Arundel, &c.

Principalis consiliarius.
Capitalis consiliarius.
You shall have what we have observed by our own readings, of others learn that which is here wanting.

Acts of Parliament naming the Presidents of the Council, 21 H.8. cap. 20. 31 H.8. ca.10. 34 H.8. ca.1.

This Office was never granted but by Letters Patents under the Great Seal durante beneplacito, and is very ancient: for John Bishop of Norwich was President of the Council In Anno 7 Regis Johannis, Holl. fo. 169. Math. Paris 205. & Math. Westm Dormivit tamen hoc officium regnante magna Elizabetha.

The Lord President is said in the Statute of 21 H.8. ca.20. to be attending upon the Kings most Royal Person, and the reason of his attendance is, for that of later times he hath used to report to the King the passages, and the state of the business at the Council Table. Sæ 50 E.3. ubi supra.

Next to the President of the Council, (as more fully appeareth in the Chapter of Precedency) sitteth in Council, &c. the Lord Privy Seal, who besides his Oath of a Privy Counsellor taketh a particular Oath of the Privy Seal, which consisteth on four parts: 1. That he, as far forth as his cunning and discretion suffereth, truly, justly, and evenly execute, and exercise the office of the Keeper of the Kings Privy Seal to him by his Highness committed. 2. Not leaving or eschewing so to do for affection, love, meed, doubt, or dread of any person or persons. 3. That he shall take special regard, that the said Privy Seal in all places where he shall direct unto, may be in such substantial wise used and safe kept, that no person without the Kings special commandment or his assent, or knowledge, shall move, seal, or imprint any thing with the same. 4. Generally, he shall observe, fulfil, and do all and every thing which to the Office of the Keeper of the Kings Privy Seal duly belongeth and appertaineth.

21 H.8. ca.20.
Vid Rot. Parl.
50 E.3. nu.12.

The Lord Privy Seal

See Rot. Parl.
50 E.3. nu.10. &
nota bene.

The Oath of the Lo. Privy Seal.

This is an Office of great trust and skill, that he put this Seal to no grant without good warrant, nor with warrant, if it be against Law, undue, or inconvenient, but that first he acquaint the King therewith.

Upon the Lord Privy Seal are attendant four Clerks of the Privy Seal: Now how, and in what wise the the Kings Grants, Writings and Leases, shall pass the three Seals, viz. the Privy Signet, the Privy Seal, and the Great Seal, and the duties of the Clerks of the Privy Signet, and Privy Seal, and what fees shall be paid, and where none at all, &c. and many Articles concerning the passing of the Kings grants, &c. you may read in the Statute of 27 H.8. a Law worthy of observation. And of this Act you may read Lib.8. fo. 18. b. in the Prisoners case. This Officer is named in the Statutes of 2 R.2. ca.5. and 12 R.2. ca.11.

27 H.8. ca.11.

27 H.8. ca.11.

* Clerk of the Privy Seal. In Rot. Parl. 11 H.4. nu.28. Garden del Privy Seal: and in the Statute of 34 H.8. ca.4. Lord Privy Seal. This Seal is called by several names. By the Statute of 11 R.2. ca.10. it is provided that Letters of the Signet, nor of the Kings secret Seal shall be from henceforth sent in damage or prejudice of the Realm, nor in disturbance of the Law. Vide Mir. ca.3. §. Exceptional power de Judge.

* An humble name of a great Officer, and in those Acts ranked amongst the Grantees of the Kingdom.

In the Statute of Articuli super Cartas, cap.6. 28 E.1. it is called the little Seal, and likewise in the Statute of 2 E.3. cap.8. it is so called. Register. fo. 186. Parvum Sigillum. 50 E.3. nu. 185. F. N. B. 180. Fleta lib. 2. cap. 12. §. Est int. &c. Custos privati Sigilli, Clerks of the Signet, Clerici Signetti are named

See the 2 part of the Instit. Artic. super Cart. ca.6.

F.N.B. 85. 2.
See Artic. super
Cartas, ubi supra.
Lib.8. ubi supra.

9 R.2. nu.12. and
11 H.4. nu.28.
not in Print.
3 E.6.ca.5. repea-
led.

in the said Act of 27 H.8. &c. and are four in number attendant upon the Kings principal Secretary, who always hath the keeping of this Seal or Signet, for sealing of the Kings Privy Letters: these four Clerks sit at the Secretaries Board. He that desireth to read more of the duty of Privy Counsellors, and how, and for what causes they are to be punished, if they offend; let him read the Parliament Roll of the 50 year of E.3. nu. 15,16,17,18,19,20,21,22,23, 24,25,26,27,28,29,&c. 34,35,&c.

Acts of Parliament concerning the Kings Privy Counsel, 25 E.3. cap.4. Stat.4. 28 E.3. cap.31. 42 E.3. cap.3. in print. 9 R.2. nu.12. 11 H.4. nu.28. 13 H.4. c.7. 3 H.7. c.14. 3 E.6. c.5. 21 Jac. c.3. concerning Warrants of Assistance, &c. 3 Caroli ca. 1. in the Petition of right, concerning Loans, &c. Imprisonment, &c. Partial Law, Souldiers, &c.

See hereafter pa. in the Chapter of the Chancery in the Articles against Cardinal Woolsey, Artic. 9,10.15. &c. concerning Privy Counsellors.

It appeareth by the Writs and Records of Parliament, that the High Court of Parliament is resolved to be holden by the King per advisamentum consilii sui, that is, by advice of his Privy Counsel.

Orders of Parliament for the Privy Counsel, and other things concerning them in the Rolls of Parliament. 50 E.3. nu. 10,12,15,21,34. 42 E.3. nu. 27. Sir John Lees case. 1 R.2. nu.87,112. Rot.Pat. 1 R.2. part 1. m.16. 2 R.2. Stat. 1. nu.49. Rot.Parl. 1 H.4. nu.2. 7 H.4. nu.3 1,32,33. 41.66,67,68,&c. 11 H.4. nu.14. 13 H.4. nu.3. 1 H.6. nu.30,31,32. 2 H.6. nu. 15,16,17. 8 H.6. nu. 27,28. certain Articles to the number of eighteen touching the order of the Kings Council (amongst which the eleventh is, that all Offices and Benefices of the Kings gift, such as had served him or his Father, should be preferred thereunto) are established by the King, the Bishops and Lords. 9 H.6. nu.25. 11 H.6. nu.19. Six Articles, whereof the last was, that a Roll should be made of such as at any time had served in the Wars, or otherwise, to the end they should be preferred to Offices and Benefits. 12 H.6. nu.4. De intendentiis consiliariorum, 31 H.6. nu.30. Vide Rot.Pat. 32 H.6. part 1. m.22.

Acts of Council concerning the same. Rot. finium, 20 E.3. m.8. Rot. Claus. 4 H.4. in Dorf. m. 13. Claus. 25 E.3. m.10. Pat. 19 R.2. part 2. m.8. Claus. 20 E.3. part 1. m.26. The Clerks of the Council are attendants upon the Lords and others of the Privy Counsel, Concerning the Clerks of the Council and their duty, see Rot.Parl. Anno 1 H.6. nu.32. 2 H.6. nu.17. &c.

Of these Acts of Parliament, Orders in Parliament, and Acts of Council we have referred you (for avoiding of tediousness) to the originals. Qui ambulat fraudulententer revelat arcana, qui autem fidelis est celat, &c.

Prov. 11. 13.

Bonum est abscondere Sacramentum regis, opera autem Dei revelare honorificum.

Tobit 12. 7.

Valerius lib. 4.
Regulæ.

Nihil magis optandum, quam ut rerum gerendarum consilia, quoad ejus fieri poterit, quam maxime occulta sint.

Ovid.

*Eximia est virtus prestare silentia rebus,
Ac contra gravior culpa tacenda loqui.*

Vegetius lib.3.
de re militari.

Nulla sunt meliora consilia, quam quæ ignoraverit adversarius antequam facias, &c. Quid fieri debeat, tractato cum multis; quid facturus sis, cum paucissimis ac fidelissimis, &c. Consilia nisi sint abscondita, exitum raro prospiciunt.

Erasmus in Epist.
* Curcius.

Consilia callida & audacia prima fronte læta, tractatu dura, eventu tristia. In consiliario imprimis requiritur temperantia, quia* novandis, quam gerendis rebus aptiora ingenia illa ignea. And it is certain that men of fiery and furious spirits easily become factious.

Plinie.

In consiliario Principis tria maxime requiruntur, libertas, fides, & veritas: libertas consilii est ejus vita & essentia, qua crepta, consilium evanescit.

Tacitus.

Privatæ res semper offecere, officientque publicis consiliis, pessimum veri affectus & judicii venenum sua cuique utilitas.

Tu civem patremque geris, tu consule cunctis;
Non tibi, nec tua te moveant, sed publica vota.

All which, and much more are comprehended within the oath abovesaid.
Some rules of Counsel, which in Councel we have observed, we will add.
First, That it is safest to give a King counsel, when he demandeth it. Secondly, The truest and best counsel is ever given to a King, when the question is so evenly propounded, as the Counsellor knoweth not which way the King himself inclineth. Thirdly, That * præpropera consilia sunt raro prospera: for resolution should never go before deliberation, nor execution before resolution. Fourthly, When upon debate and deliberation it is by the Councel Table well resolved, the ^a change thereof upon some private information is neither safe nor honorable, ^b nor that after resolution timely execution be delayed. Fifthly, It is a mean of prosperous success when the question is debated with a few, not that he should reply upon them, but that thereby the state of the question may be well understood, to the end the same may be plenarily, and fully propounded to the whole board. Sixthly, ^c God counsel is the soul of the State. Seventhly, When Counsellors do hide or disguise the truth, it is full of danger, both to the King and to ^d themselves. Eighthly, Violent courses are like to hot waters that may do good in an extremity, but the use of them doth spoil the stomach, and it will require them stronger and stronger, and by little and little they will lessen their own operation. Lastly, Such fear as doth not fall, in constantem virum, is an enemy to good counsel: for what is fear, ^e but a betraying of such success, as reason (and counsel) should afford?
No Lord of Parliament takes any place of precedence in respect he is a Privy Counsellor. But under that degree such place a Privy Counsellor shall take, as is set down in serie ordinum tempore H. 7. here after remembered in the Chapter of Precedency.

* Book of Judg. 19. ver. ultimo. Consider, consult, and then give sentence.

^a Seneca. Non semper in uno gradu, sed in una via, non semitat, sed aprat.

^b Salust. Priusquam incipias, consulto, & ubi consulueris mature facto opus est.

^c 11 H. 4. nu. 14.

^d Malum consilium consultori pessimum. Rot. Claus.

18 H. 3. nu. 19.

Segraves case.

Rot. Par. 50 E. 3.

nu. 24. Seignior

Latimers case.

^e Sap. 12.

CAP. III.

Of the Power and Authority of the Protector and Defender of the Realm and Church of England during the Kings tender age.

SEE Rot. Parl. an. 1 H. 6. nu. 26. & 27. 2 H. 6. nu. 16. 6 H. 6. nu. 22, 23, 24. 8 H. 6. nu. 13. 11 H. 6. nu. 19. 32 H. 6. nu. 71. where you shall find his authority, place, and precedence, well expressed and described.

The surest way is to have him made by authority of the Great Council in Parliament.

See Hollingsheds Chronicle, pa. 1069. which may give you occasion to search for the Records of such Protectors as are there rehearsed.

CAP. IV.

The Court of the High Steward of England, intituled, Placita Coronæ coram Thom. Duce N. Seneschallo Angliæ.

¶ His Title.
¶ The antiquity of his Office.
Nota, Then a Judge of the Peers of the Realm.
1 H. 4. 1. 13 H. 8. 13
Cust. de Norm.
cap. 10.

His title is Seneschallus Angliæ. This office is very ancient, and was before the Conquest. For I read in an ancient and authentical Manuscript, intituled, *Autoritas Seneschalli Angliæ*: where putting an example of his authority, saith: Sicut accidit Godwino comiti Kancie tempore Regis Edwardi antecessoris Willielmi Ducis Normandiæ pro hujusmodi male gestis & consiliis suis (per *Seneschallum Angliæ*) adjudicatus & forisfecit Comitivam suam.

In the time of the Conqueror William Fitz-Eustace was Steward of England. And in the Reign of Will. Rufus and H. 1. Hugh Grantsfemenel Baron of Hinkley held that Barony by the said Office.

Of ancient time this Office was of inheritance, and appertained to the Earldom of Leicester, as it also appeareth by the said Record: *Seneschalicia Angliæ pertinet ad Comitivam de Leicester, & pertinuit ab antiquo*. That is, that the Earldom of Leicester, was holden by doing of the office of Steward of England. Other Records testified that it should belong to the Barony of Hinkley. The truth is, that Hinkley was parcel of the possessions of the Earl of Leicester, for Robert Bellomont Earl of Leicester in the Reign of H. 2. married with Petronil daughter and heir of the said Hugh Grantsfemenel Baron of Hinkley, and Lord Steward of England, and in her right was Steward of England. And so it continued until by the forfeiture of Simon Montford it came to King H. 3. who in the 50 year of his Reign, created Edmond his second son Earl of Leicester, Baron of Hinkley, and High Steward of England, which continued in his Line until Henry of Bullinbrooke * son and heir of John of Gaunt Duke of Lancaster and Earl of Leicester, who was the last that had any estate of inheritance in the Office of the Steward of England. Since which time it was never granted to any Subject, but only hac vice. And the reason was, for that the power

* Rot. Parl. 21 R. 2. nu. 4. Int. placita coronæ John of Gaunt Duke of Lanc. and Earl of Leicester, Steward of England.

power of the Steward of England was so transcendent, that it was not holden fit to be in any subjects hands; for the said Record saith, *b* Et sciendum est quod ejus officium est supervidere, & regulare sub Rege, & immediate post Regem totum Regnum Angliæ, & omnes ministros legum infra idem Regnum temporibus pacis & guerrarum, &c. and proceedeth particularly with divers exceeding high Powers and Authorities, which may well be omitted, because they serve for no present use.

c And albeit their power and authority have been since the Reign of H. 4. but hac vice, yet is that hac vice limited and appointed. As when a Lord of Parliament is *d* indicted of treason or felony, then the grant of this Office under the Great Seal is to a Lord of Parliament, reciting the Indictment, *e* Nos confidentes quod justitia est virtus excellens & Altissimo complacens, eaq; præ omnibus uti volentes, ac pro eo quod officium Seneschalli Angliæ, cujus præsentia pro administratione justitiæ & executione ejusdem in hac parte facien^r requiritur, ut acceperimus, jam vacat: De fidelitate, strenuitate, provida circumspectione, & industria vestris plurimum confidentes ordinavimus & constituimus vos *ex hac causa & causis* Seneschallum nostrum Angliæ ad officium illud cum omnibus eidem officio in hac parte debitis & pertinentibus hac vice gerend^r, accipiend^r, & exercend^r, *f* dantes & concedentes vobis tenore præsentium plenam & sufficientem potestatem & auctoritatem, ac mandatum speciale indictmentum prædict. &c. So as it appeareth, that this great Officer is wholly restrained to proceed only upon the recited indictment. And he to whom this Office is granted, must be a Lord of Parliament, and his proceeding is to be *g* secundum leges & consuetudines Angliæ: for to is his Commission. And hereof you may read more at large in the third part of the Institutes, cap. High Treason. *h* Also at every Coronation he hath a Commission under the Great Seal hac vice, to hear and determine the claims for grand Serjeants and other honorable services to be done at the Coronation for the solemnization thereof: for which purpose the High Steward doth hold his Court some convenient time before the Coronation. See a president hereof before the Coronation of King R. 2. John Duke of Lancaster then Steward of England, (who in claims before him was styled Treshonorable Seignior Roy de Castle & Leon, & Seneschal Danglerterre) and held his Court in Alba Aula apud Westm. die Jovis proxime ante Coronationem. Quæ quidem Coronatio habita & solemnizata fuit die Jovis sequente, viz. 16 Julii Anno 1 R. 2.

The first that was created hac vice for the solemnization of the Coronation of H. 4. was Thomas his second son. *i* And upon the arraignment of John Holland Earl of Huntingdon, the first that was created Steward of England hac vice, was Edward Earl of Devon.

Rot. Parl. 37 H. 6. nu. 49. Thomas Courtney Earl of Devon was arraigned of High Treason before Humphrey Duke of Gloc. hac vice Steward of England, and acquitted; and so was the Lord Dacres of the North arraigned of High Treason before Thomas Duke of Norff. hac vice Steward of England, and acquitted by 20 Peers.

When he sitteth by force of his Office he sitteth under a Cloth of Estate and such as direct their speech unto him, say, Pleace your Grace my Lord High Steward of England. The stile of the said John of Gaunt was Johannes filius Regis Angliæ, Rex Legionis & Castellæ, Dux Aquitaniæ & Lancastriæ, Comes Derbiæ, Lincolnæ, & Leicestriæ, Seneschallus Angliæ. And in respect his power before it was limited was so transcendent, I find no mention made of this great Officer in any of our ancient Authors, the Mirror, Bracton, Britton, or Fleta. It seemeth they liked not to treat of his authority. Neither do I find him in any Act of Parliament, nor in any Book case before 1 H. 4. and very few since: which hath caused me to be the longer in another place to set forth his authority and due proceeding upon the arraignment of a Peer of the Parliament, by judicial record and resolution of the Judges, agreeable with constant experience.

For the Etymology and signification of [seneschallus] see the first part of the Institutes:

His authority *hac vice*: and therefore he is not mentioned in the Statute of 31 H. 8. cap. 1. concerning the placing of great Officers.

b Herewith agreeeth the Custom of Norm. cap. 10. fol. 17. Hollensh. Chron. p. 866.

c His authority (*hac vice*) limited.

d See the 2. part of the Institutes Mag. Cart. cap. 29.

1 H. 4. cap. 1.

e He is sole Judge by the Common Law and can make no Deputy.

f Stanf. pl. cor. 152

1 H. 4. fol. 1.

13 H. 8. fol. 11. b.

g His rule.

h His further authority.

i V. 1 H. 4. fol. 1. Therefore Thomas

Walsingham p. 363.

and others who affirm that he was

beheaded at Pleasie in Essex by the Commons, do err.

k Term Pasch. 26. H. 8. of Justice

Spilmans Report.

See the third part of the Institutes, cap. Treason.

The first part of
the Instit. Sect. 78.

Institutes: And though it hath several derivations, yet as being applied to England, it is properly derived from Sen, that is, Justice, and Schale, that is, Governor of Officer, that is, Præfectus seu officarius justitiæ. And this agreeth well with his authority and duty to proceed (as hath been said) secundum leges & consuetudines Angliæ.

It is to be observed, that as the Peers of the Realm that be Triors or Peers, are not sworn, so the Lord Steward being Judge, &c. is not sworn; yet ought he according to his Letters Patents to proceed secundum legem & consuetudinem Angliæ.

CAP. V.

The Honorable Court of Star-Chamber, Coram Rege & Concilio suo: Of ancient time, Coram Rege in Camera, &c.

¶ That it is an
eminent Court
proved by Re-
cords, and Acts
of Parliament.

a 22 Lib. Ass. pl. 52
b Rot. pat. 1. part
m. 13.

¶ Fraud and
falschood.

c Rot. pat. 1 part
m. 13.

¶ Falschood in an
Officer and rasing
of a Record.

d Rot. clauf. 42 E. 3.
m. 8. in dorf.
Vid. Rot. pat.
2 R. 2. 1 part m.
Camera stellata, for
rasing.

12 R. 2. c. 11. dev.
le council.

e Rot. clauf. 41 E. 3.
Camd. Brit 130.

f Rot. clauf. 16 R. 2.
in dorf. m. 11.

g Pat. 6 H. 5. &
consimile Anno 7
H. 5. pro manerio
de Filherwicke in
Com. Norff.

b Rot. clauf. 17 H. 6

¶ In the 28 year of the Reign of E. 3. it appeareth, that the retours Coram nobis are in thre manners. Coram nobis in Camera (which it is said, was afterwards called Camera Stellata.) 2. Coram nobis ubicunque fuerimus in Anglia, which is the Kings Bench: and Coram nobis in Cancellaria. And of all the High and Honorable Courts of Justice, this ought to be kept within his proper bounds and jurisdiction.

b In 38 E. 3. Coram Rege & Concilio, John Redland complained of Robert Spinke for delivery of prisoners upon false suggestion made to the King: upon hearing the cause, the defendant was acquitted, the plaintiff imprisoned.

c In 39 E. 3. Ralph Brantingham one of the Chamberlains of the Exchequer complained before the King and his Council of Richard Cesterfeld Clerk Deputy of the Kings Treasurer, in the receipt, for divers allowances, payments, &c. unduly made, and for rasing of Records, &c. Upon the hearing of the cause by the whole Council, the defendant was acquitted, and the plaintiff removed from his office, and committed to prison.

d The Abbot de Bruera, Ragge his Monk sentenced Coram Rege & Concilio, for rasing of Letters Patents, and inserting other words: and the Letters Patents by sentence cancelled.

e In Anno 41 E. 3. in a Bill of complaint exhibited to the King by Elizabeth the widow of Nicholas Awdeley plaintiff, against Jane Awdeley defendant, who appeared before the Kings Council, viz. the Chancellor, Treasurer, Justices, and others assembled En la Chamber des Estoils pres de la Receits.

f A suit depending before the King and Council between the Abbot of Saint Austen of Canterbury and others concerning Wrecks, &c. The Abbot brought his action at the Common Law against the parties, who being thereupon arrested and imprisoned, the Sheriff was commanded by the Kings Writ to deliver them, and to forbear to serve any other Proses against them, and the reason there yielded is notable, Quia non est juri consonum, aut honestum, quod aliquis de hiis quæ coram nobis & concilio nostro in discussione pendent, alibi inde interim placitari debeat, aut apparere.

g A suit depending before the King and his Council, between W. G. of the one part, and H. S. of the other part: a Sequestration is ordered for the preservation of the things in question.

b In 17 H. 6. an enrolment of a confession of John Ford of Lon. Mercer before the Lord Treasurer and others of the Kings Council in the Star-Chamber for
the

the fraudulent packing and transporting of Wool, with a Writ to the Sheriff of London to set him on the Pillory.

The Abbot of Westminster exhibited his Bill to the King against the Sheriffs of London for arresting and drawing out with force a privileged person out of the Sanctuary of St. Martins le grand belonging to the said Abbey: which matter after due proceedings being heard in the Court of Star-chamber before the Lords and others of the Kings Council, and Hodey and Newton Chief Justices, which Justices determining, that by Law the party ought to enjoy the privilege of Sanctuary, the Sheriffs were grievously fined in the Star-chamber by particular name: which sentence the Lord Dier, as he hath reported under his own hand, saw upon a reference to him and Justice Southcote out of the Star-chamber, Trin. 11 Regine Eliz. concerning the Sanctuary of Westm. for Hampton and Whiteacres being in for debt. And the Lord Dier made this Note with his own hand. Nota, per le Star-chamber. And this is a notable proof of the Jurisdiction of the Court for fining, &c. That the Bill was exhibited to the King, and that the two Chief Justices then did sit, and were Judges (amongst others) in that Court.

Anno 29 H. 5.
Trin. 11 Eliz.
Dier. Manuscript
not imprinted.

For divers Riots, Exortions, Oppressions, and grievous offences by divers persons done against the Kings Peace and Laws, to divers of his Liege people, commandment hath been given by the Kings Writs under the Great Seal (which continue until this day) to appear before the King in the Chancery, or before him and his Council at certain days to answer the premises, which commandment hath been many times disobeyed. Provision is made by that Act for the punishment of such disobedience, as by that Act appeareth. True it is, that this Act was but temporary, yet it affirmeth so much as before hath been said.

Stat. de 31 H. 6.
cap. 2.
Vide Rot. Parl.
1 H. 6. nu. 41.

Anno 35 H. 6. a Writ of Certiorari was directed: Thomæ Kent Clerico Concilii: Volentes certis de causis certiorari super tenorem cujusdem Actus Pasch. ultime præterito apud Westm. in Camera Stellata concernen Johannem Ducem Norff. And for there proses of Rebellion against the said Duke.

Ex bundello brevium Regis.
35 H. 6.

Robert Davers a Counsellor at Law by bill exhibited to the King, &c. for defamation of razing a Record. And the said Robert by the Kings Council in Camera Stellata was acquitted, and John Broket that made the rasure sentenced.

Rot. claus. 11 H. 6.

The Kings Council assembled in the Star-chamber. The Lord Cromwells case.

Rot. claus. 28 H. 6.

An order in the Star-chamber for the Duke of Yorks Council to have access to him, because called into the Chamber by Privy Seal, &c.

Rot. pat. 32 H. 6.
m. 20.

An exemplification of a complaint by Richard Heron against John Prout, Coram rege & consiliariis suis in Camera Stellata, for a great misdemeanour concerning Wools.

Pat. 3 E. 4. part 1.

Anno 8 E. 4. proceeding by English bill, answer, replication, &c. Coram rege & Concilio.

Rot. petit. 8 E. 4.

Anno 20 E. 4. a sentence in the Star-chamber for turbulent and undue elections between the Abbot of Bury and the Inhabitants.

Rot. pat. 20 E. 4.
part 2.

We have omitted many other Records, but because they be of like nature, we have contented our self with these. And now we will consult with our Book Cases and Reports of Law: wherein either coram rege & concilio, or coram Rege & concilio in Camera Stellata, is named.

39 E. 3. fo. 14. 19 aff. pl. 1. 40 aff. 38. 13 E. 4. 9. in Camera Stellata. Vid. 27 E. 3. cap. 13. 21 E. 4. 71. in Camera Stellata. 2 R. 3. fo. 2. & 11. in Camera Stellata. 1 H. 7. 3. in Camera Stellata. This Court in ancient times sat but rarely, for these causes. First, for that enormous and exorbitant causes which this Court dealt withall only in those days rarely fell out. Secondly, this Court dealt not with such causes, as other Courts of ordinary Justice might condignly punish, ne dignitas hujus curiæ vilesceret. Thirdly, it very rarely did sit, lest it should draw the Kings Privy Council from matters of State, pro bono publico, to hear private causes, and the principal Judges from their ordinary Courts of Justice.

Book Cases and
Reports of Law

3 H.7.ca.1.

21 H.8.cap.20.
The president of
the Kings Council
added.

That which now is next to be considered in serie temporis is the Statute of 3 H.7. The Letter whereof followeth :

It is ordained that the Chancellor and Treasurer of England, and the Keeper of the Kings Privy Seal, or two of them calling to them a Bishop and a Temporal Lord of the Kings most Honourable Privy Council, and the two Chief Justices of the Kings Bench and Common Pleas for the time being, or other two Justices in their absence upon Bill or Information put to the said Lord Chancellor, or any other, against any person for unlawful maintenance, giving of liveries, signs and tokens, and retainers by Indentures, Promises, Oaths, Writings or otherwise, Imbraceries of his Subjects, untrue demeaning of Sheriffs in making of Pannels, and other untrue returns, by taking of money, by injuries, by great Riots, and unlawful Assemblies, have Authority to call before them by Writ or Privy Seal the said misdoers, and they and other by their discretion, by whom the truth may be known, to examine, and such as they find therein defective, to punish them after their demerits, after the form and effect of Statutes thereof made in like manner and form as they should, and ought to be punished, if they were thereof convict after the due order of Law.

Camden Brit.

Camera Stellata auctoritatem prudentissimus princeps Henricus septimus ita Parliamentaria adauxit & constabilivit, nonnulli primum instituisse falso opinantur.

Upon this Statute and that which formerly hath been said, these Six conclusions do follow. The first conclusion is, that this Act of 3 H. 7. did not raise a new Court ; for there was a Court of Star-chamber, and all the Kings Privy Council Judges of the same. For if the said Act did establish a new Court, then should those four or any two of them be only Judges, and the rest that they should call to them, should be but Assistants, and Aidants, and no Judges : for the Statute of 31 E.3. cap.12. which raiseth a new Court, and before new Judges, is introductory of a new Law, by having consulance of error in the Exchequer, which shall be reversed in the Exchequer Chamber before the Chancellor and Treasurer, or calling to them two Judges, there the Chancellor and Treasurer are only Judges in the Writ of Error, and so in the like. But it is clear that the two Justices in the Star-chamber are Judges, and have voices, as it hath been often resolved, and daily experience teacheth. And further to clear this point, if the Justices should be but Assistants and no Judges in the Star-chamber, for that they are to be called, &c. then, and for the same reason should neither Lord Spiritual nor Temporal, nor other of the Privy Council be Judges, nor have voices in the Court of Star-chamber. And therefore the sudden opinion in 8 H.7. and of others not observing the said distinction between Acts declaratory of proceedings in ancient Court, and Acts introductory of a new Law in raising of a new Court, is both contrary to Law and continual experience.

8 H.7.13. Plow.
Com.393.

The second conclusion is, that the Act of 3 H. 7. being in the affirmative is not in some things pursued. For where that Act directeth that the Bill or Information should be put to the Lord Chancellor, &c. all Bills and Informations in that Court are constantly and continually directed to the Kings Majesty, as they were before the said Act ; and it is a good rule, that where the Act of 3 H.7. is not pursued, there (if there be many judicial presidents in another sort) they must have warrant from the ancient Court ; and yet it is good (as much as may be) to pursue this Act, there being no greater assurance of jurisdiction then an Act of Parliament. And where there be no such presidents, then the Statute as to the Judges must be pursued : and that was the reason that in
default

default of others, Sir Christopher Wray Chief Justice of England for a time, was made Lord Privy Seal to sit in the Star-chamber, Ne curia deficeret in justitia exhibenda.

Thirdly, that this Act being (as hath been said) in the affirmative, and enumerating divers particular offences, albeit (injuries) is a large word, yet that Court hath jurisdiction of many other, as is manifest by authority, and daily experience, and this must of necessity be in respect of the former jurisdiction.

Fourthly, this Act in one point is introductory of a new Law, which the former Court had not, viz. to examine the Defendant, which being understood after his answer made, to be upon Oath upon Interrogatories, which this ancient Court proceeding in criminal causes had not, nor could have but by Act of Parliament, or prescription, the want whereof especially in matters of frauds and deceits (being like birds closely hatched in hollow trees) was a mean that truth could not be found out, but before the Statute the answer was upon Oath.

Fifthly, where it is said in this Act, And to punish them after their demerits after the form and effect of Statutes made, &c. The Plaintiff may choose whether he will inform upon such Statutes as this Act directeth, or for the offence at the Common Law, as he might have done before this Act: which proveth that this Act taketh not away the former jurisdiction.

6. Lastly, that the Jurisdiction of this Court dealeth not with any offence, that is not malum in se, against the Common Law, or malum prohibitum, against some Statute.

It is to be observed that neither the Statutes of 37 E.3. ca. 18. 38 E.3. ca. 9. 42 E.3. ca. 3. 17 R.2. ca. 6. nor any other Statute taketh away the Jurisdiction of any settled Court of Justice, neither is the Court of Star-chamber named in any of them, and yet was it a Court then and before that time.

Divers special Acts of Parliament have given also Jurisdiction to this Court, viz. 12 R.2. ca. 11. 2 R.2. cap. 5. 13 H.4. cap. 7. 33 H.8. cap. 1. 4 & 5 Ph. & Mar. cap. 8. 5 Eliz. ca. 9, 10. & cap. 14. 27 Eliz. cap. 4.

And seeing the proceeding according to the Laws and Customs of this Realm cannot by one rule of Law suffice to punish in every case the enormity and enormity of some great horrible crimes and offences, and especially of great men, this Court dealeth with them, to the end that the medicine may be according to the disease, and the punishment according to the offence, Ut poena ad paucos, metus ad omnes perveniat, without respect of persons, be they publick or private, great or small.

As for oppression, and other exorbitant offences of great men, (whom inferior Judges and Jurors (though they should not) would in respect of their greatness be afraid to offend) bribery, extortion, maintenance, champerty, imbracery, forgery, perjury, dispersers of false and dangerous rumours, news, and scandalous libelling, false and partial misdemeanours of Sheriffs and Bailiffs of liberties, frauds, deceits, great and horrible riots, routs, and unlawful assemblies, single combats, challenges, duels, and other heinous and extraordinary offences and misdemeanours; but ordinary, and such offences as may be sufficiently and condignly punished by the proceeding of the Common Laws, this Court leaveth to the ordinary Courts of Justice and dealeth not with them, ne dignitas hujus Curie vilesceret, as before is said.

The proceeding in this Court is by Bill or Information, by examination of the Defendant upon Interrogatories, and by examination of witnesses, and rarely ore tenus, upon the confession of the party in writing under his hand, which he again must freely confess in open Court, upon which confession in open Court, the Court doth proceed. But if his confession be set down too short, or otherwise then he meant, he may deny it, and then they cannot proceed against him but by Bill or Information, which is the fairest way.

The Informations, Bills, Answers, Replications, &c. and Interrogatories in English, and ingrossed in parchment, and filed up. All the Writs and Process of the Court are under the Great Seal: The sentences, Decrees and Acts of

C The Jurisdiction of this Court.

Cambden Brit. 130. In Camera stellata tractantur criminalia, perjuraria, imposturae, dolus malus, excessus, &c.

For proceeding ore tenus, see before Ro. Claus. 17 H. 6. John Fords case Rot. Claus. 42 E.3. the Abbot of Brueries case &c. In notoriois ordo est ordinem juris non servare.

this Court are ingrossed in a fair book with the names of the Lords and others of the Kings Council and Justices that were present and gave their voices.

Pasch. 12 Ja. Reg.

In an Information in this Court by the Attorney General against Sir Stephen Procter, Birkenhead and others for conspiracy against, and scandal of the Earl of Northampton, and Edward Lord Wootton two of his Majesties Privy Council: At the hearing of which cause there sat eight in Court, and four of them condemned the Defendant: and the Lord Chancellor, the two Bishops, and the Chancellor of the Exchequer acquitted him. And the question was, whether the Defendant should be condemned or no: and herein it was moved by the Kings learned Council, that when the voices be equal, that in that case, of which part the Lord Chancellor was, on that side it should be decided, without regard, whether it was for the Plaintiff or Defendant: And it was resolved, that regularly, & de communi jure, in respect of the equality of the voices no sentence could be given in that case, as it holdeth in the High Court of Parliament, and all other Courts, according to the old rule, *Paribus sententiis reus absolvitur*. And therefore the Presidents of this Court were to be searched; for except presidents could make a difference between this Court and others, the Defendant could not be sentenced. Whereupon the Court referred this question to the two Chief Justices, that they calling unto them the Kings learned Council to view presidents, whether by the custom of this Court the common rule in other Courts is altered. Before whom in the presence of the Kings learned Council two presidents were produced for proof of the said custom, viz. one *Termino Hil. Anno 39 Eliz.* between Gibson Plaintiff, and Griffith and others Defendants: wherein the complaint was for a Riot. And upon hearing of the cause eight sat in Court, and four gave their sentence that the Defendants were guilty, and the other four, whereof the Lord Chancellor was one, did acquit the Defendants, and no sentence of condemnation was ever entered. But the Justices took it, that that president tended not to prove any such custom, for it agreed with the rule in other Courts. Another president was shewed, *Termino Hil. 45 Eliz.* in an Information by the Queens Attorney General against Bathern and others for forging of a Will, &c. Upon the hearing of the cause, the presence consisting of eight, whereof four gave sentence against the Defendant for forgery, and to be punished according to the Statute of 5 Eliz. the other four, whereof the Lord Chancellor was one, found him guilty of a misdemeanour, and not of the forgery, and imposed a fine of five hundred pound only, and imprisonment, and that was entered according to the Lord Chancellors voice. But no rule of Court was shewed for entering thereof in that manner: so as it appeared not that it was ever moved, or debated in Court, and in that case all concluded against the Defendant, and it is but one president. Now whether this one, being such a one as it is, and so late, be sufficient to alter the general Law and course of all other Courts, I leave to the judgment of this honourable Court: And sentence was never given against Sir Stephen Procter agreeable to the general rule in other Courts. *Sæ Rot. Parl. 8 H. 6. nu. 28.*

Erodus fo. 112.

Hil. 39 Eliz. in Camera Stellata, Gibsons case.

Hil. 45 El. in Camera Stellata, Batherns case.

Mich. 36 & 37 El.

Lawrence Hide and Henry Hide Esquires, exhibited a Bill of complaint against George Coriet and others upon the Statute of 32 H. 8. cap. 9. for unlawful maintenance: and complained for three several Leases for certain years of the Parsonage of Dynton in the County of Wiltes. whereof the Lessor nor any of his Ancestors were in possession within a year before, &c. and pursued the Statute: Upon which part of the Bill (for the Bill concerned Riots and other things) the Defendant demurred in Law, and the causes of the demurrer were, First, that by the said Act this Court had no Jurisdiction of this cause upon this Statute, because that the Act which is introductory of a new Law did not give Jurisdiction to this Court, but the suit must be in the Courts of the Common Law upon this Act, which (said they) also appeared, in that in the remedy given by the Act in this clause, In which action, bill, plaint, or information,

tion no essoign, protection, wager of Law or injunction shall be allowed, and that no essoign, &c. did lie in this Court. The second objection was, This Court had no power to give the Plaintiff remedy to have execution in this Court of the penalty given by this Act. Whereunto upon great advisement it was answered and resolved. As to the first, that the Statute did give jurisdiction to this Court, for it is one of the Kings Courts, &c. intended in the Act: and the Statute of 3 H. 7. declareth that this Court hath jurisdiction of maintenance, and this Act of 32 H. 8. doth add but a greater penalty: and as to the clause of essoign, &c. it must be construed reddendo singula singulis, &c. for as no essoign, &c. lieth in this Court, so no injunction is awarded in the Court of Common Pleas, &c. As to the second, It was resolved that this Court had power in this case to grant execution of the penalty inflicted by this Act, as in a like case had been done, in the case of James Taverner. And both these points had formerly been resolved in this Court, 14 Maii, 27 Eliz. between Robert Bradshaw Esq; Plaintiff, and Robert Charnock Esq; Defendant, upon this Statute, and the case decreed accordingly, and a Commission awarded out of this Court, to enquire of the value, &c. And for these causes by the rule of the whole Court, the demurrer was over-ruled, and the Defendant ordered to answer.

Dier Mich. 6 & 7
Eliz. fol. 236.

Dier 15 El. 323.
in Camera stellatæ
Taverners case.
Pasc. 27 El. in
Camera stellatæ,
Charnocks case.

This Court sitteth twice in the week in the Term time, viz. on Wednesdays, and Fridays, except either of those days fall out to be the first or last day of the Term, and then the Court sitteth not, but it constantly holdeth the next day after the Term ended: but if any cause be begun to be heard in the Term time, and for length or difficulty cannot be sentenced within the Term, it may be continued and sentenced after the Term.

It is the most honorable Court (our Parliament excepted) that is in the Christian world, both in respect of the Judges of the Court, and of their honorable proceeding according to their just Jurisdiction, and the ancient and just orders of the Court. For the Judges of the same are (as you have heard) the Grandæ of the Realm, the Lord Chancellor, the Lord Treasurer, the Lord President of the Kings Council, the Lord Privy Seal, all the Lords Spiritual, Temporal, and others of the Kings most honorable Privy Council, and the principal Judges of the Realm, and such other Lords of Parliament as the King shall name. And they judge upon confession, or deposition of witnesses: And the Court cannot sit for hearing of causes under the number of eight at the least. And it is truly said, Curia Camera stellatæ, si vetustatem spectemus est antiquissima, si dignitatem, honoratissima. This Court, the right institution and ancient orders thereof being observed, doth keep all England in quiet.

The dignity of
this Court.

The Judges of
this Court.

Camb. ubi sup.

Albeit the title of the Court be Coram Rege & Concilio, yet the Kings Council of that Court hear and determine causes there, and the King in Judgment of Law is always in Court. As in the Kings Bench the style of the Court is Coram Rege, and yet his Justices who are his Council of that Court do hear and determine, and so Coram Rege in Cancellaria, and the like.

So this Court being holden Coram Rege & Concilio, it is or may be composed of a thræ several Councils. That is to say, of the Lords and others of his Majesties Privy Council, always Judges without appointment, as before it appeareth. 2. b The Judges of either Bench and Barons of the Exchequer are of the Kings Council for matter of Law, &c. and the two Chief Justices, or in their absence other two Justices are standing Judges of this Court. 3. The Lords of Parliament are properly De c magno concilio Regis, but neither these, being not of the Kings Privy Council, nor any of the rest of the Judges or Barons of the Exchequer are standing Judges of this Court.

a See the 1. part
of the Institutes
Sect. 164. Verb.
veigne les Burgeses
al Parliament. 4 E.
3. 2. 3 ass. pl. 15.
b 39 E 3 5. 19 E. 3
Judgment. 174.
W. 1. cap. 1. 17 E. 2
Stat. de templariis.
16 R. 2. Stat. de
Præmunire. 43 Ass.

pl. 15. Regist. 124, 125. 191. 27 H. 6. 5. 2 R. 3. 10. c 27 August. 5 H. 4. in the Exchange between the King and the Earl of Northumberland, in Turle. 37 E. 3. cap. 18. &c. Note the Parliament is called *commune concilium*.

It is now, and of ancient time hath been called the Chamber of the * Stars, the

The name of this
Court.

Star * 41 E. 3. ubi sup.

a In many of the Records before cited.

b 25 H. 8. cap. 1. Lambard.

Sir Tho. Smith. Lib. 2. cap. 4.

¶ The process.

¶ Officers of the Court sworn.

a Star-chamber, the *b* starred Chamber, in respect the roof of the Court is garnished with golden stars. Some have imagined that it should be called the Star-chamber, because crimina stellionat⁷ are there handled: Others of this Saxon word Steeran, to steer or rule as doth the Pilot, because this Court doth steer and govern the ship of the Commonwealth. Others, because it is full of windows: but the true cause of the name is, because, as is aforesaid, the roof is starred. In all records in Latine, it is called Camera stellata.

The process in this Court is Subpoena, Attachment, process of rebellion, &c. all under the Great Seal.

In this Court there is the Clerk of the Council, which is an office of great account, and trust, for he is to receive, endorse, enter, keep, and certify the bills, pleadings, records, orders, rules, sentences and decrees of the Court: and I find that in former times men of great account have had that office in this Court: as to give you a little taste thereof: King H. 6. by his Letters Patents, 15 Julii, An. Regni sui 22. granted the same to Thomas Kent Doctor of the Law for his life, calling him Clericum concilii nostri, and soon after swoze him of his Privy Council. King H. 7. An. 1. of his Reign, granted the same office to John Bladefwell Doctor of Laws for term of his life: But hereof this little taste shall suffice.

Lastly, It remaineth to be seen what jurisdiction this Court hath in punishment, and where, and in what cases this Court may inflict punishment by Pillory, papers, whipping, loss of ears, tacking of ears, stigmata in the face, &c. (For it extendeth not to any offence that concerns the life of man or obruncation of any member: the ears only excepted, and those rarely and in most heinous and detestable offences.) But herein the surest rule is, that seeing it is an ancient Court, the presidents of the Court are to be followed, and the rather for that the Court consisteth of such learned and honourable Judges. And novelties without warrant of presidents are not to be allowed: generally some certain rules are to be followed, especially where no presidents are extant in the case. * Quod arbitrio Judicis relinquitur, non facile trahit ad effusionem sanguinis: For general Acts of Parliament which inflict punishment, viz. sur forfeiture de corps & de avoir, &c. these are expounded not to extend to life, or member, but to imprisonment, &c.

See the First part of the Institutes, Sect. 745. Verb. Felony. Majore poena affectus, quam legibus Statut⁷ est, non est infamis. Poena gravior ultra legem posita estimationem conservat. Confessus in jure pro judicato habetur, cum quodammodo sua sententia damnatur. Cum confitente sponte mitius est agendum.

In hac Curia non agitur de delictis ordinariis, ne dignitas hujus Curie vilesceret. Quicquid Judicis auctoritati subjicitur, novitati non subjicitur.

Ecclesiasticus 20. 8. Qui potestatem sibi sumit injuste, odietur.

* See Statut. de moneta temp⁷ E. 1. 35 E. 1. de Carlist. 20 E. 3. cap. 4. Vid. 23 El. cap. 2. And note where he shall lose his ears for defamation of the Queen.

CAP. VI.

A Court for redress of delays of Judgments in the Kings great Courts.

This Court is raised by the Statute of 14 E.3. which followeth in these words,

14 E.3. cap. 4.
Stat. 1.
Rot. Parl. 2 R. 2.
nu. 63. confirmed
by Parliament.

Item, Because divers mischiefs have happened of that, that in divers places, as well in the Chancery, as in the Kings Bench, the Common Bench, and in the Exchequer, before the Justices assigned, and other Justices to hear and determine deputed, the judgments have been delayed, sometimes by difficulty, sometimes by divers opinions of the Judges, and sometimes for some other cause: It is assented, established, and accorded, that from henceforth at every Parliament shall be chosen a Prelate, two Earls, and two Barons, which shall have commission and power of the King to hear by Petition delivered unto them the complaints of those that will complain them of such delays and grievances made, and they shall have power to do come before them at *Westminster*, or elsewhere, where the places or any of them shall be, the tenor of Records and Processes of such judgments so delayed, and to cause the same Justices to come before them, which shall be then present, to hear their cause and reasons of such delays: which cause and reasons so heard by * good advice of themselves, the Chancellor, Treasurer, the Justices of the one Bench and of the other, and other of the Kings Council, as many and such as shall seem convenient, shall proceed to take a good accord, and make a good judgment: and according to the same accord so taken, the tenor of the same Record, together with the judgment which shall be accorded, shall be remanded before the Justices, before whom the Plea did depend; and that they shall give judgment according to the same Record: and in case it seemeth to them that the difficulty be so great, that it may not well be determined without assent of the Parliament, that the said tenor or tenors shall be brought by the said Prelate, Earls and Barons in the next Parliament, and there shall be a final accord taken what judgment ought to be given in this case, and according to this accord it shall be commanded to the Judges before whom the Plea did depend that they shall proceed to give judgment without delay.

Judgments delayed.

* Note, by good advice of the Chancellor, Treasurer, and Justices: Good accord.

Vid. Regist. f. 124. B.
Rex Johanni de
B. Militi, &c.

Before the making of this Statute, delay of Judgments was forbidden both by the Common Law, and by Acts of Parliament. By the Common Law, 1. It is required, that *Plena & celeris justitia fiat partibus*, &c. not plena alone, nor celeris alone, but both plena & celeris. All Writs of *Præcipe quod reddat*, are, *Quod juste & sine dilatione reddat*, &c. All judicial Writs are sine dilatione, &c. 2. There did and yet doth lie a Writ de *procedendo ad judicium*, when the Justices or Judges of any Court of Record, or not of Record, delayed the party plaintiff or defendant, demandant or tenant and would not give judgment: and thereupon an Alias, Plur, and an Attachment, &c. doth lie. And the words of the

Regist. 131. 2.
F.N.B. 23. c.
And so upon Com-
nuance granted.

Regist. fol. 22.
F.N.B. 153. b. &c.
Cust. de Norm.
cap. 27.

Writ

Diuturna dilatio.

Writ be, Quia redditio iudicii loquelæ quæ est coram vobis, &c. de quadam transgressionem eidem A. per præfat' B. illata, ut dicitur, diuturnam cepit dilationem ad grave damnum ipsius A. sicut ex querela sua accepimus; Vobis præcipimus quod ad iudicium inde reddendum cum ea celeritate quæ secundum legem & consuetudinem Regni nostri procedas, &c.

Regist. fo. 18. F.N.
B. fol. 20. a. &c.

3. Likewise when Justices or Judges of any Court of record, or not of record gave Judgment, and delayed the party of his execution, the party grieved may have a *Writ De executione iudicii*; by which *Writ* the Justices or Judges are commanded, *Quod executionem iudicii nuper redditæ, &c. de loquela quæ fuit, &c. per breve nostrum, &c. sine dilatione fieri fac'*. And thereupon an *Alias Plur'* and *Attachment, &c. do lie*.

See hereafter, cap.
Exchequer and
Exchequer
Chamber.

4. By the meeting together upon adjournment of the cause out of the Court, where the cause dependeth, &c. All the Judges, &c. which now we call an *Exchequer Chamber* cause, warranted by the Common Law and ancient presidents before this Statute: and the frequent use of this Court of *Exchequer* chamber hath been the cause that this Court upon the Act of 14 E.3. hath been rarely put in ure.

2 E.3. f.7. Ellys
Callers case. Bract.
lib. 1. c. 2. Rot. Parl.
14 E.3. nu. ult.
Sir Geoff. Stanton's
case.

5. By the Kings *Writ* comprehending quod si difficultas aliqua interfit, that the Record should be certified into the Parliament, and to adjourn the parties to be there at a certain day. Si obscurum & difficile sit iudicium, ponantur iudicia in respect' usque magnam curiam. An excellent Record, whereof you may read in the Parliament holden at Westminster the Tuesday after the translation of Becket, Anno 14 E.3.

Mag. Cart. cap. 29.

Secondly, by Acts of Parliament, Nulli vendemus, nulli negabimus, aut differemus iustitiam vel rectum.

2 E.3. fol. 3. per
Aldham.

14 E.3. jour. 24.

18 E.3. 47. 57.

31 E.3. an. 161.

39 E.3. 37.

17 H.4. 5. 76.

9 H. 6. 58. b.

5 E.4. 132. Fortesc.

c. 5. F.N.B. 240. d.

* Regist. fo.

F.N.E. 240. d.

That it shall not be commanded neither by the Great Seal, nor by the Little Seal, nor by Letters, nor any other cause to delay right: and albeit such commandment come, &c. that by them the Justices surcease not to do right in no manner. Vide 2 E.3. cap. 8. 14 E.3. cap. 14. 18 E.3. Stat. 3. 2 R. 2. a Statute not in print, Rot. Parl. nu. 51. whereby it is enacted, that no Justice shall stay justice for any *Writ*, Letter of the Great Seal or Privy Seal, or other commandment whatsoever against the Laws and Statutes before that time made. Rot. Parl. 2 H. 4. n. 64. An. 5 H. 4. n. 33. all which are declaratory of the Common Law. * And upon the said Act of 2 E.3. a *Writ* is framed, directed to the Justices, by which they are commanded, *Quod ad iustitiam partibus, &c. faciend' virtute alicujus mandati de magno sigillo, & parvo sigillo vobis direct' seu dirigend' nullatenus superseadeatis, &c.* And thus much for the Common Law and Acts of Parliament.

This Statute of 14 E.3. cap. 5. consisteth of two general parts, viz. the Preamble and the Body of the Act. In the Preamble three things are to be observed. 1. That (notwithstanding the provision of the Common Law) mischiefs do happen by delay of judgments. 2. It enumerateth in what Courts these delays do happen, viz. in the Chancery, in the Kings Bench, the Common Bench, and the Exchequer, the Justices assigned, and other Justices to hear and determine deputed. 3. It declareth how these delays have grown, viz. sometime for difficulty of the matter in Law, sometime in diversity of opinion of the Judges, and sometimes for some other cause, that is, by Commandments, Letters, or Messages of the King or great Men, &c. In the Body of the Act we have collected many observations. 1. That at every Parliament there shall be chosen a Prelate, two Earls, and two Barons, (or one Bishop, two Earls, and two Barons.) viz. At this Parliament were chosen, 1. John Stratford Archbishop of Canterbury, (a man famous for learning, loyalty, and vertuous living.) 2. Rich. Fitzalan Earl of Arundell, a man of great wisdom, prowess, and integrity. 3. William Clynton Earl of Huntingdon, and Admiral of England, a man lately before advanced for his singular valor, wisdom, and vertue. 4. The Lord Wake of Lidel: and 5. Ralph Lord Basset of Drayton, two of the most renowned Barons of England. Quos omnes honoris causa nomino.

2. This

2. This Act doth appoint that the Prelate, two Earls, and two Barons are to have a Commission and power of the King under the Great Seal (and none of them can be absent) which Commission is to endure until the next Parliament.

3. This Commission and power consisteth on ten parts. 1. Ad audiendum, to hear the petition delivered to them, the complaints of those that will complain to them of such delays or grievances made. 2. Ad venire faciend' to come before them at Westminster, or elsewhere, the tenor of the Records and Processes of such Judgments so delayed; and this is to be done by the Kings Writ of Certiorari. 3. Ad venire faciend', to cause the same Justices to come before them. 4. Ad audiend' suas rationes & causas talium dilationum, to hear their reasons and causes of such delays which ought to be entered of Record. 5. Which causes and reasons so heard, Ad procedendum, to proceed to make a good accord. 6. But this must be done not only by themselves, but by the good advice of certain assistants appointed by the Act, viz. the Chancellor, Treasurer, the Justices of the one Bench and the other, and other of the Kings Council, as many, and such as they shall think convenient. 7. Ad capiendum, to take a good accord of the assistants. 8. Ad faciendum, to make a good Judgment. 9. Ad remandandum, to remand before the Justices, before whom the plea did depend, the tenor of the said Record, together with the Judgment that so shall be accorded. Lastly, that those Justices shall presently give judgment according to the said Record.

A Commission granted in 18 E.3. grounded upon this Statute, and referring to the same being enacted, as there it appeareth, at a Parliament holden die Mercurii proximi post medium Quadragesimæ Anno 14 E.3. regni Angliæ & Franciæ primo, there being two Parliaments in that year, which you may read, being worthy of observation, for it is a good exposition of this Act.

4. It is further provided by the said Act of 14 E.3. that in case it seemeth to them, that the difficulty is so great, that it cannot well be determined without assent of Parliament, that the tenor or tenors shall be brought by the said Prelate, Earls and Barons, unto the next Parliament, and there shall final accord be taken what judgment shall be given in this case.

a It is better that the demandant be delayed, then the tenant disherited, or that the Law be altered. Sherd, we cannot nor will delay any man in respect of our Oath.

b The Justices ought to delay no man in the name of the King where the King hath no right. The demandant shall not be legally delayed twice for one cause.

c Delay in a Quare Impedit, though it be by essoin, is a disturbance. d Semper fur est in mora. e In circuitu impii ambulant.

f In divers cases the party grieved shall have an action for unjust delay.

g Tolle moram, semper nocuit differre paratis.

But seeing neither the Common Law, nor any of the Acts of Parliament do extend to Ecclesiastical Courts, it is then demanded, What if an inferiour Ordinary will refuse, or delay to admit and institute a Clerk presented by the right Patron, to a Church within his Diocess, or the like: Or delay, or refuse to give sentence in a case depending before him? It is answered, that the Archbishop of the Province may grant his Letters under his Seal to all and singular Clerks of his Province, to admonish the Ordinary, within nine days to perform that which by Justice is desired, or otherwise to cite him to appear before him or his Official at a day in those Letters prescribed, and to cite the party that hath suffered such delay, then and there likewise to appear, and further to intimate to the said Ordinary, that if he neither perform that which is enjoined, nor appear, he himself without further delay will perform the justice required. Or in the former of the said cases, the party delayed may have his Quare imp. but that is thought not to be so speedy a remedy.

Rot. Pat. 18 E.3.
2 part.

¶ Rules concerning delays.

a 18 E.3. 54.a.

13 H.4.4.

24 E.3. 64.a.

b 4 E.3. 2.a.

22 H.6. 39. per

Newton.

10 E.3. 57.

40 E.3. 22.&c.

c 4 E.3. 14.

6 E.3. 4.

d Bracton.

e Psal. 12.9.

f 44 E.3. 4.

18 E.3. 12, 13.

20 H.6. 10.

22 E.4. 22, 23.

F.N.B. 96. f.97.b.

g Ovidius.

h This is called duplex querela: necessary to be known for finding of Institutions, &c.

CAP. VII.

The Court of Kings-Bench, Coram Rege.

Lib. 3. cap. 7.
fo. 105. b.

FO. 108. a.

* Nota.

* A granter prohibitions.

Lib. niger in
Scaccario cap. 4.

* Note this word.

a See Britton f. 1. speaking of the King, Et pur ceo que nous ne suffisons en nostre proper person a oier & terminer tous querels del people. Avomus partie nostre charge en plusieurs parts come est ordeine, &c.
20 E. 3. cap. 1.
b Stat. de Marl. 52 H. 3. ca. 1.
Vid. 4 H. 4. ca. 22.
c 24 H. 8. cap. 2. in effect.
d Brañ. lib. 1. ca. 5. fol. 3. b.
e 20 E. 3. cap. 1. speaking in the Kings person.

W. 1. An. 3 E. 1.
cap. 1.
Fleta lib. 1. ca. 29.

BRacton both make in few words a notable expression of this Court. Habet Rex plures Curias in quibus diversæ actiones terminantur, & illarum curiarum habet unam propriam, sicut Aulam regiam, & Justiciarios capitales qui proprias causas Regias terminant, & aliorum omnium per querelam, vel per privilegium, seu libertatem. And soon after speaking of the Justices of this Court saith: Item Justiciariorum quidam sunt capitales, generales, perpetui, & majores à latere regis residentes, qui omnium aliorum corrigere tenentur injurias, & errores.

And Britton saith: In droit des Justices que son assignes de nous suer & tener nostre lieu ou que nous seons en Anglitterre. * Voilons que eux eiant conufance de arrender faux judgments, & de terminer appeales & auters trespasses faitz enconter nostre peace, & * enconter nostre jurisdiction, & lour record se esteant solong; ceo que nous manderons per nostre bre.

Fleta in describing this Court saith: Habet & Rex Curiam suam & Justiciarios suos tam milites quam clericos locum suum tenentes in Anglia, coram quibus, & non alibi nisi coram semetipso & concilio suo vel Auditoribus specialibus falsa judicia & errores Justiciariorum revertuntur & corriguntur: ibidem etiam terminantur brevvia de appellis, & alia brevvia super actionibus criminalibus & injuriarum contra pacem regis illatarum impetrata, & omnia, in quibus continetur ubi tunc fuerimus in Anglia.

In the Black Book of the Exchequer, it is thus said of the Chief Justice of this Court: Capitalis Justitia præsidet primus in regno. Out of these three ancient Authors we observe these six conclusions.

First, where Bracton saith, Habet Rex plures curias in quibus diversæ actiones terminantur. Hereby, and in effect by a Britton, this conclusion followeth, that the King hath committed and distributed all his whole power of Judicature to several Courts of Justice, and therefore the judgment must be, Ideo consideratum est per Curiam. And herewith do agree divers Acts of Parliament and Book cases, some whereof, for illustration, we will briefly remember; and leade the judicious reader to the rest.

b Provisum, concordatum & concessum est quod tam majores, quam minores justitiam habeant & recipiant in curia Domini Regis. c That the Laws Ecclesiastical and Temporal were and yet are administered, adjudged, and executed by sundry Judges, &c. d Expedit etiam magistratus reipublicæ constitui, quia per eos qui juredicendo præsumt effectus rei accipitur; parum est enim jus in civitate esse, nisi sint qui possunt jura gerere.

e For the pleasure of God and quietness of our Subjects, as to save our Conscience, and to keep our Oath, by the assent of our Great men and other of our Council, we have commanded our Justices, that they shall from henceforth do even Law and Execution of right to all our Subjects, rich and poor, without having regard to any person, without letting to do right for any Letters or commandment which may come to them from us, or from any other, or by any other cause.

Agreable to that great Canon of the Law Anno 3 E. 1. which we have translated into Latine: Rex præcipit quod pax sacro sanctæ Ecclesiæ & regni solide custodiatur & conservetur in omnibus, quodq; justitia singulis tam pauperibus quam divitibus

divitibus administratur, nulla habita personarum ratione. See the second part of the Institutes, W. 1. cap. 1.

1 H. 4. the King hath committed all his power judicial, some in one Court, and some in another, so as if any would render himself to the judgment of the King in such case where the King hath committed all his power judicial to others, such a render should be to no effect. And 8 H. 6. the King doth judge by his Judges (the King having distributed his power judicial to several Courts) And the King hath wholly left matters of Judicature according to his Laws to his Judges. 8 H. 4. fo. 19.
8 H. 6. 20. & tit. Grant. F. 5.

And albeit it be enacted that the Delinquent shall be fined at the will of the King, Non Dominus Rex in camera sua, nec aliter nisi per justiciarios suos (finem imponit) & hæc est voluntas regis, viz. per Justiciarios & legem suam, unum est dicere. 2 R. 3. fo. 11.

The second conclusion is, that in those days this Court of Kings Bench did follow the Court: and therefore Bracton calleth it Aulam regiam, because they sat in the Kings Hall. Britton calleth the Justices of this Court, Justices assignes de nous suer: and Fleta, ubi tunc fuerimus in Anglia.

The third is, that it is called the Kings Bench, and the Pleas thereof Coram rege: because in this Court (as Bracton saith) those Capitales justiciarii proprias regis causas terminant, and therefore the King himself cannot be Judge in propria causa.

The fourth is, that under these words [proprias causas] are included three things. First, all pleas of the Crown: as all manner of Treasons, Felonies, and other pleas of the Crown which ex congruo are aptly called proprias causas regis, because they are placita coronæ regis. Secondly, regularly to examine and correct all and all manner of errors in fact, and in Law, of all the Judges and Justices of the * Realm in their judgments, process, and proceeding in Courts of record, and not only in pleas of the Crown, but in all pleas, real, personal, and mixt, (the Court of the Exchequer excepted, as hereafter shall appear.) And this is proprium quarto modo to the King in this Court: for regularly no other Court hath the like jurisdiction, and therefore may be well called propria causa regis. And these two be of high and sovereign jurisdiction. A Thirdly, this Court hath not only jurisdiction to correct errors in judicial proceeding, but other errors and misdemeanours extrajudicial tending to the breach of the peace, or oppression of the subjects, or raising of faction, controversy, debate, or any other manner of misgovernment: so that no wrong or injury, either publick or private, can be done, but that this shall be reformed or punished in one Court or other by due course of Law. As if any person be committed to prison, this Court upon motion ought to grant an Habeas corpus, and upon return of the cause do justice and relieve the party wronged. And this may be done though the party grieved hath no privilege in this Court. It granteth prohibitions to Courts Temporal and Ecclesiastical, to keep them within their proper jurisdiction. Also this Court may bail any person for any offence whatsoever. And if a Freeman in City, Burgh or Town Corporate, be disfranchised unjustly, albeit he hath no privilege in this Court, yet this Court may relieve the party, as it appeareth in James Bagges case, ubi supra, & sic in similibus. Of these you may read in Glanvil lib. 1. cap. 2. & c. & lib. 10. cap. 18. and in the third part of the Institutes per totum, & Scanf. per totum.
* And in Tre. and of errors in the Kings Bench there. Lib. 7. fo. 18. F. N. B. 22. 34 Ass. 7 39 E. 3. Error 88. a Lib. 11. fo. 98.

Fourthly, this Court may hold plea by writ out of the Chancery of all trespasses done Vi & armis, of Replevins, of * Quare impedit, &c. Jam. Bagges case. Vid. 10 E. 3. ca. 3. Marthallca.

5 See the second part of the Institutes, the 11 Chapter of Magna Carta, Communia placita non sequantur curiam nostram. F. N. B. 89. 92.
* Tr. 19 E. 3. coram rege Rot. 56. Linc.

Fifthly, this Court hath power to hold plea by Bill for debt, detinue, covenant, promise, and all other personal actions, ejectione firmæ, and the like, against any that is in custodia Mareschalli, or any Officer, Minister, or Clerk of the Court: and the reason hereof is, for that if they should be sued in any other Court they should have the privilege of this Court: and lest there should be a failure of Justice (which is so much abhorred in Law) they shall be impleaded here by Bill, though these actions be common pleas, and are not restrained by the said Act. b 2 part of the Institutes, Magna Carta cap. 11.

See the second
part of the Insti-
tutes, ubi sup.
27 H.3. coram
Rege. Rot 9.
Hus & Haut.

31 H.6. 10. b. ad-
judge.

1 H.7. 12.
14 H.7. 14.
21 E.3. 46.
11 H.4. 49. in na-
tivo habendo.

F.N.B. 177.
30 aff. 35. Aff.
de mord.

3 H.4.7.

See more hereof
in the Chapter of
the Exchequer.
31 E.3. cap.12.

a Rot. Par. 18 E.1.
nu.97. Placit.
Int. Io. de novo
Burg & Regman,
&c

b W.1. cap.14.
Against prepos-
tore hearings.

c Art. super Cart.
28 E.1. cap. 5.
Glan. temp. H.2.

lib.2. ca.6. & lib.11. ca.1. Coram Justiciis Domini Regis in Banco sedentibus. Vid. adjudicat' coram Rege in every Term, from 1 E.1. during all his reign in every several Term in the year. And in all those times and Terms the Court of Chancery did sit.

of Magna Carta, ubi supra. Likewise the Officers, Ministers, and Clerks of this Court privileged by Law in respect of their necessary attendance in Court, may implead others by Bill in the actions aforesaid. And all this appeareth by Bracton, who lived when Magna Carta was made, ubi supra: where he saith, *Ecce aliorum omnium per querelam vel per privilegium sive libertatem. And continual experience concurrereth with antiquity herein.*

H. P. captus per querimoniam mercatorum Flandriae & imprisonatus offert domino regi *Hus & Haut* in plegio ad standum recto, & ad respondendum predictis mercatoribus, & omnibus aliis qui versus eum loqui voluerint, &c. This plea was after the Statute of Magna Carta, Anno 9 H.3. Of these words *Hus & Haut*, two French words, *Hus* signifying an Elder-tree, and *Haut* the staff of a Halbert, &c. I leave the conjecture that some have made thereof to themselves: we think it was then common bail now changed to Do and Ro, and the rather for this word [offert.] And it is observable, that then putting in bail at one mans suit, he was in custodia Mareschalli to answer all others which would sue him by Bill, and this continueth to this day. If any person be in custodia Mareschalli, &c. be it by commitment, or by Latitat, Bill of Proce or other Proces of Law, it is sufficient to give the Court jurisdiction: and the rather, for that the Court of Common pleas is not able to dispatch all the subjects causes, if the said actions should be confined only to that Court. And seeing none but Serjeants at Law can practise in the Court of Common pleas, it is necessary that in this Court of Kings Bench Apprentices and other Counsellors of Law might by experience inable themselves to be called Serjeants afterwards; otherwise Serjeants must want experience, which is the life of their profession. And the proceedings in that Court for so long time, and under so many honourable Judges and reverend Sages of the Law, hath gotten such a foundation, as cannot without an Act of Parliament be shaken. And the errors in the Kings Bench cannot be reversed (but in certain particular actions by the Statute of 27 Eliz. cap.8. wherein the jurisdiction of the Court is saved) but in the High Court of Parliament, as be- fore in the Chapter of the Court of Parliament appeareth.

Dirctly, if a Writ in a real action be abated by judgment in the Court of Common pleas, and in a Writ of Error the Judgment is reversed in this Court, and the Writ is adjudged good, this Court shall proceed upon this Writ, and is not restrained by Magna Carta, ubi supra, ne curia domini Regis deficeret in justitia exhibenda.

This Court may hold plea in Assise of novel disseisin without any patent, for it is querela and not placitum, and so not within these words communia placita, as it hath been expounded and warranted by continual experience.

A Scire fac' to repeal a Patent of the King may be brought in this Court. And where Fleta saith, *Nisi coram semetipso & concilio suo, vel Auditoribus specialibus falsa judicia ac errores justiciariorum revertuntur*: It is to be known that all the Common Law errors in the Court of Exchequer (being the proper Court of the King for his revenue and profit) were examinable before Commissioners appointed by the Kings Writ under his Great Seal, which Fleta here calleth Auditores speciales. But now by the Statute of 31 E. 3. the Chancellor and Treasurer taking to them the Justices and other sage persons, such as to them seemeth to be taken, shall examine the errors in the Exchequer, &c.

a In ancient time, when pleas were holden in Parliament, when the parties descended to issue, the Record was adjourned into the Kings Bench to be tried there.

b See the Statute of W.1. against preposterous hearings in this Court, and the exposition of the same in the second part of the Institutes.

c By the Statute of Artic super Cart. the Chancellor and the Justices of the Kings Bench were to follow the Court: but notwithstanding both the Chan- cery and the Kings Bench were at this time seised Courts, during the several

Terms

Terms of the year as by infinite records, both before and after this Statute doth appear. So as at this time they did not attend in the Kings Court, but when they were called, yet were accounted as parcel of the Kings household as long as they followed the Court: but this cumbersome attendance wholly ceased in the Reign of E. 3. and yet the Lord Chancellor would have had his purveyance, as if he had continued still as one of the household, until he and all others, but those of the Kings, Queens, or Princes household only, were restrained by Act of Parliament. 34 E. 3. cap. 2.

Also upon perusal of the Records in the Reign of H. 3. from the beginning of his Reign until the ending of it, this Court sat in the Term time where the other Courts of Justice did sit. And the pleas were stiled to be holden Coram Rege as to this day they are: And this appeareth by Fitz. Abzidgment, in the titles of Corone, of Brief, of Writ &c. and by Bracton who in many places voucheth Judgments in the Reign of H. 3. in Terms Coram Rege. And this appeareth also in elder times: but hereof thus much shall suffice to prove, that at the making of the said Act of 28 E. 1. and long before this Court in Term times sat with the Kings other Courts, and specially for Pleas of the Crown, &c. and that the said Act is to be intended, that the Chancellor and the Judges of this Court should attend the King and follow the Court when they were required.

It is truly said that the Justices de banco Regis have supreme authority, the King himself sitting there as the Law intends. They be more then Justices in Cire.

The Justices in this Court are the sovereign Justices of Oier and Terminer, Gaol-delivery, Conservatoys of the peace, &c. in the Realm. See the books in the margin, you shall find excellent matter of learning concerning the supreme jurisdiction of this Court.

In this Court the Kings of this Realm have sit in the High Bench, and the Judges of that Court on the lower Bench at his feet; but Judicature only belongeth to the Judges of that Court, and in his presence they answer all motions, &c.

The Justices of this Court are the sovereign Coroners of the Land, and therefore where the Sheriff and Coroners may receive appeals by bill, a Fortiori the Justices of this Court may do it.

a So high is the authority of this Court, that when it comes and sits in any County, the Justices of Eire, of Oier and Terminer, Gaol-delivery, b they which have consuance, &c. do cease without any writing to them. But if any indictment of Treason or Felony in a forraign County be removed before certain Commissioners of Oier and Terminer in the County where this Court sits, yet they may proceed, because this Court (for that this indictment was not removed before them) cannot proceed for that offence. But if an indictment be taken in Midd. in the Vacation, and after this Court sit in the next Term in the same County (if this Court be adjourned) then may special Commissioners of Oier and Terminer, &c. in the interim proceed upon that indictment, but the more usual way is by special Commission. And all this was resolved by all the Judges of England at Winchester Term, An. 1 Jacobi Regis, in the case of Sir Everard Digby and others: and so had it been resolved, Mich. 25. & 26 Eliz. in the case of Arden and Somerville, for this kind of special Commission of Oier and Terminer: and herewith agreeth Pl. Com. in the Carl of Leic' case, An. 1 Mar. Reginz.

And so supreme is the jurisdiction of this Court, that if any Record be removed into this Court, it cannot (being as it were in his center) be remanded back, unless it be by Act of Parliament. And this appeareth by the Judgment of the Parliament in Anno 6 H. 8. but by the authority of that Act indictments of Felonies and Murders removed into the Kings Bench may by the Justices of that Court be remanded, and this Court may send down as well the bodies of all Felons and Murderers, as their indictments into the Counties where the same murders or felonies were committed or done, &c. in such manner, &c. as if the indictments had not been brought into the Kings Bench.

34 E. 3. cap. 2.
And so did the Chancery, both of them being to some purposes but one Court, as it appeareth in the Chapter of the Court of Chancery.

3 El. Dier 187.
27 Aff. p. 1.

7 E. 4. 18. 4 H. 7. 18
14 H. 7. 21 lib. 9.
fol. 118. a & b.
Seignior Sanchers case.

17 E. 3. 13. a. Lib. 4.
fol. 57. in the Sadlers case. Pl. Com. 269.
4 21 Aff. 12. 27 Aff. 1.
28 Aff. 52.
21 H. 7. 29.
b Pasch. 12 E. 3. Coram Rege, Rot. 99. Chieft. W. 1. cap. 3. Lib. 9. fol. 118. Ubi supra.

Hil. 1 Jac. Sir Walter Raleighs case, &c.
Pl. Com. fol. 338.
Count. de Leic. case acc'.

22 E. 3. 6. b. 24 E. 3. 73. 29 Aff. 52.
Stanf. pl. Cor. 15.

6 H. 8. cap. 6. It extendeth only to Felonies and Murders.

See before cap. Parliam. p. 21. when a Writ of Error is sued of a Judgment, *Coram Rege*, they proceed *Super, tenore recordi*, and the record it self remaineth in this Court.
2 H. 4. cap. 10.

26 Ass. p. 43.

Designatio Justiciariorum est à Rege jurisdictionis vero ordinaria à lege.

* Glanvil lib. 1. cap. 6. 13. &c. s. 2. penultimo.

a Lib. nigro in Scaccario. par. 1. cap. 4.

Never in any legal record (which we have seen) they were called

Summi Justicarii. Rot. Cart. 45 H. 3. 13. Aug.

Capitalis Justiciarius Angliæ.

* This was the original jurisdiction of this Court.

But the Justices of the Kings Bench of their own authority may grant a *Nisi prius* in case of treason, felony, and other pleas; for there they send but the transcript of the Record, and not the Record it self, as shall be said in the Chapter of Justices of *Nisi prius*. But if the Justices of the Kings Bench do perceive that any indictment is to be removed into that Court by practise or for delay, the Court may refuse to receive the same, before it be entered of Record, and remand the same back again for justice to be done.

By the Statute of 2 H. 4. the Clerk of the Crown of this Court, if fourscore or an hundred men be indicted of felony or trespass, of one felony, or one trespass, and they plead to an issue, as not guilty, the said Clerk ought not to take for the *Venire fac*, nor for the entering of the plea but two shillings only, and not two shillings for every one, which Act is made in affirmance of the Common Law. So if one man be indicted of two several felonies or trespasses, and is acquitted, he shall pay but for one deliberance.

Out of this Court are other Courts derived, as from one fountain several springs and rivers, in respect of the multiplicity of causes, which have increased. Jurisdiction istius Curie est originalis seu ordinaria, & non delegata. The Justices of this Court have no Commission, Letters Patents or other means to hold pleas, &c. but their power is original and ordinary. They were called anciently * *Justicia*, *Justicarii*, *locum tenentes Domini Regis*, &c. The Chief Justice, *Justicia Angliæ*, *Justitia prima*, *Justiciarius Angliæ*, *Justiciarius Angliæ capitalis*, and *Justiciarius noster capitalis ad placita coram nobis terminand*. To observe the changes of these names, and the reason and change thereof, is worthy of observation.

Before the Reign of E. 1. the Chief Justice of this Court was created by Letters Patents, and the form thereof (taking one example for all) was in these words.

Rex, &c. Archiepiscopis, Episcopis, Abbatibus, Prioribus, Comitibus, Baronibus, Vicecomitibus, Forestariis, & omnibus aliis fidelibus Regni Angliæ, Salutem. Cum pro conservatione nostra, & tranquillitatis Regni nostri, & ad justitiam universis & singulis de Regno nostro exhibendum constituerimus dilectum & fidelem nostrum Philippum Basset Justiciarium Angliæ quamdiu nobis placuerit capitalem: Vobis mandamus in fide qua nobis tenemini firmiter injungentes, quatenus in omnibus quæ ad officium Justicarii predicti, nec non ad conservationem pacis nostre & Regni nostri eidem dum in officio predicto steterit, plenius sitis intendentes, Teste Rege, &c.

Herein six things are to be observed. 1. That the creation of his office was by Letters Patents. 2. That this officer was originally instituted for three things. 1. Pro conservatione nostra. 2. Tranquillitatis Regni nostri. 3. * Ad justitiam universis & singulis de Regno nostro exhibendam. The third thing to be observed is, that he was stiled *Justiciarius Angliæ capitalis*. 4. That Philip Basset was constituted Chief Justice of England, and after made Knight, for he was not Knight at the making of the Letters Patents. This Philip was of Wellesby in the County of Northampton, and was excellently learned in the Laws of the Realm; he was younger brother of Baron Basset of Draiton Basset in the County of Staff. 5. That he was constituted quamdiu nobis placuerit. Lastly, The clause of attendance, and the persons that are to give attendance, &c. to him, are very remarkable. This Philip Basset was the last of this kind of creation by any like Letters Patents, and he died Chief Justice near to the end of the Reign of H. 3. King E. 1. being a wise and prudent Prince, knowing that *Cui plus licet quam par est, plus vult quam licet*, (as most of these *summi Justicarii* did) made three alterations. 1. By limitation of his Authority. 2. By changing *Summus Justiciarius*, to *Capitalis Justic*. 3. By a new kind of creation, viz. by Writ, lest if he had continued his former manner of creation, he might

might have had a desire of his former Authority, which they do expressly appear by the Writ yet in use, viz.

Rex, &c. E. C. militi Salutem. Sciatis quod constituimus vos Justiciarium nostrum capitalem ad placita coram nobis tenenda, durante beneplacito nostro. Teste, &c.

Which Writ being called Breve both in few words comprehend the substance of the former Letters Patents: for Capitalis Justiciarius noster and ad placita coram nobis tenenda includes all that which was truly intended to be granted to him in the former Letters Patents, which alteration was made by Authority of Parliament, though not now extant. For it is a rule in Law, that ancient offices must be granted in such forms and in such manner, as they have used to be, unless the alteration were by Authority of Parliament. And continual experience approveth, that for many successions of ages without intermission, they have been, and yet are called by the said Writ, Et optima legum interpret consuetudo. But after the said alteration, viz. in anno 25 E. 1. Reginaldus de Grey (was styled) Justiciarius Angliæ, and he was in legal proceedings called Capitalis Justiciarius noster, when his Patent was, Capitalis Justiciarius Angliæ.

We have seen a fine in these words: *Hæc est finalis concordia facta in Curia Domini Regis apud Westm' a die Sancti Michaelis in tres septimanas anno Regni Regis Henrici filii Regis Johannis 3. coram Domino Huberto de Burgo capitali Justiciario Angliæ & aliis Domini Regis fidelibus tunc ibi presentibus.*

a In the Writ De homine replegiand', he (which was formerly called Capitalis Justiciarius Angliæ) is called Capitalis Justic' noster, and sometime Cap. Justic' Regis. The stile of this Court of Kings Bench is Angliæ in the margin: and in divers Acts of Parliament he is called Chief Justice of England. 34 H. 8. cap. 26. 37 H. 8. cap. 12. 2 E. 6. cap. 13. 5 E. 6. cap. 11.

The Chief Justice in Ireland is called Capitalis Justic' Hiberniæ at this day.

Pasch. 13 E. 1. (the pleas in this Court are Coram Rege) then were styled thus, Placita coram locum Domini Regis tenentibus, &c. Ideo venit inde jurata coram Rege vel ejus locum tenentibus, 15 Paschæ, &c. within which words all the Judges of the Kings Bench were included.

b Anno Dom. 969. in the Abby of Ramsey this Epitaph was ingraven, &c. D. Ailivinus inclyti Regis Edgari cognatus totius Angliæ Aldermanus, &c. who was without question Chief Justice of all England. Inter leges Alveredi cap. 34. he is called Cyninger ealdorman. j. Regis Aldermannus five Senator, five Judex. Vide cap. 3. 15. & 38. Et inter leges Edwardi cap. 35.

The rest of the Judges of the Kings Bench have their Officers by Letters Patents in these words. Rex omnibus ad quos presentes literæ pervenerint, Salutem. Sciatis quod constituimus dilectum & fidelem Johannem Doderidge militem unum Judiciariorum ad Placita coram nobis tenenda durante beneplacito nostro, Teste, &c. c These Justices of the Kings Bench are styled 1. Capitales. 2. Generales. 3. Perpetui. 4. Majores à latere Regis residentes: but the Chief Justice is only called by the King, Capitalis Justiciarius noster. They are called 1. Capitales, in respect of their supreme jurisdiction. 2. Generales, in respect of their general jurisdiction throughout all England, &c. 3. Perpetui for that they ought not to be removed without just cause. 4. Majores à latere Regis residentes, for their honour and safety, that they should be protected by the King in administration of justice, for that they be à latere Regis.

And where in 5 E. 4. it is holden by all the Justices in the Exchequer chamber that a man cannot be Justice by Writ but by Patent or Commission, it is to be understood of all the Judges, saving the Chief Justice of this Court. But both the Chief Justice, and the rest of the Judges may be discharged by Writ under the Great Seal.

None can be a Judge of this Court unless he be a Serjeant of the degree of the Coif, and yet in the Writ or Patent to them made: they are not named Serjeants.

See in the Chapter of the Constable and Marshal for this point.

Rot. Par. 25 E. 1. so named in the Writ of Parliament to him directed.

Nora, His fine was levied, Inter Martinum Abbatem de Missenden querentem, & Thurstanum Basset desorcientem de 3 Carucat' terre in lega, before him in the Kings Bench in 3 H. 3. before Mag. Cart. and styled Capit. Justiciarius Angliæ Lib. de Missenden, fol. 109. divers other fines with the same stile.

a Regist. fol. 77.

24 E. 1. Stat. de consuetudine. 3 E. 3.

Coron 361. Lib.

Int. Co. tit. action sur le case. Sed. 5.

b Aldermanni Judices dicti sunt in diebus illis.

c Bract. lib. 3. f. 108.

L. 5 E. 4. 137.

If a Writ be returnable Coram Justiciariis nostris apud Westm', it shall be returned in the Common Pleas: but if it be returnable in this Court, it must be Coram nobis ubicumq; fuerimus in Anglia. See the Second part of the Institutes, Mag. Cart. cap. 11. and the exposition upon the same.

In former times some ill disposed Clerks of this Court, because they could have no original out of the Chancery for debt returnable into this Court, they would sue out an original action of trespass (a mere feigned action) returnable into this Court, and so proceed to Execution, (where in truth the cause of action is for debt) and when the Defendant appeared, &c. all the former proceedings were waived, and a bill filed for the Defendant for debt. This is an unjust practice in derogation of the dignity and honor of this Court, and worthy of severe punishment according to the Statute of W. I. c. 29. when it is found out: Vide in the Chapter of the Court of Common Pleas in the end thereof.

Now that we may here say somewhat to a vulgar objection of the multiplication of suits in Law both in this Court, and other of his Majesties Courts at Westm. more then hath been in the Reigns of E. 3. R. 2. H. 4. H. 5. H. 6. E. 4. and R. 3. It is to be observed, that there be six causes of the increase of them, whereof two be general, and the other four particular. The general be Peace, and Plenty: The particular, 1. The dissolution of so many Monasteries, Chanteries, &c. and the dispersing of them into so many several hands. 2. The swarm of Informers. 3. The number of Concealors. 4. The multitude of Attornies.

For the first general: In the Reigns of E. 3. R. 2. H. 4. H. 5. and part of the Reign of H. 6. in respect of the wars in France, &c. and in the residue of the Reign of H. 6. and in the Reign of E. 4. in respect of the bloody and intestine wars, and in almost continual alarms within the bowels of this Kingdom, between the Houses of Lancaster and York, there could not be so many suits in Law, as since this Kingdom hath enjoyed peace; (which is the first general cause) Peace is the mother of Plenty, (which is the second general cause) and Plenty the Nurse of suits. In particular, by the dissolution of Monasteries, Chanteries, &c. and dispersing of them, &c. Upon the Statutes made concerning the same (there being such a confluence of Ecclesiastical possessions) there arose many questions and doubts, whereupon suits were greatly increased. 2. Informers and Relators raised many suits, by Informations, Writs, &c. in the Kings Courts at Westm' upon penal Statutes, many whereof were obsolete, inconvenient, and not fit for those days, and yet remained as snares upon the Subject, so as the Subject might justly say with Tacitus, Prius vitiis laboravimus, nunc legibus. 3. Concealors, Helluones, that endeavoured to swallow up Cathedral Churches, and the Ecclesiastical possessions of Church-men, and the livings of many others of the Kings Subjects. Lastly, The multitude of Attornies, more then is limited by Law, is a great cause of increase of suits.

a But now on the other side, to shew what great hope there is, that suits in Law shall decrease, for that in effect all the particular causes of the increase of them are taken away, which we have thought good to remember.

b For the first, the Statute of 35 Eliz. cap. 3. hath remedied part, but the Statute of 21 Jac. c. 2. hath given a plenary salve for the whole mischief, whereof you may read at large in the Third part of the Institutes, cap. 87. against Concealors, turbidum hominum genus. *c* For the second, By the Statute of 21 Jac. cap. 4. Informations, &c. upon penal Statutes are to be heard and determined in their proper Counties, and not in the Courts at Westminster, whereby the vexatious swarm of Informers who are best trusted where they are least known, are vanished and turned again to their former occupations. *d* Concerning Attornies, the number are set down, and that they ought to be learned and veracious, and as I understand, the Judges at this time have this matter in consideration. But besides these, there are some other Statutes made for avoiding and decreasing of vexatious suits. As an Act in 21 Jac. Regis cap. 16. for limitation of actions and avoiding suits in Law, a good and beneficial Law. Another Act at the same Parliament, cap. 13. for the further reformatory of Jeofails

W. 1. cap. 29.
Vid 30 H. 6. 37. a.
30 E. 3. 32. It is
fraud where one
thing is pretended
and another done.
Multiplication of
suits.
Peace.
Plenty.
Dissolution of
Monasteries, &c.
Informers.
Concealors.
Attornies.

*Silent leges inter
arma.*

Concordia parva
res crescunt, ex
opulencia lites.

* See the Pream-
bles of the Stat. of
4 H. 4. cap. 18.
33 H. 6. cap. 7.
a Diminution of
suits.
b Possessions of
Monast. and
Chanteries, &c.
35 El. ca. 3. 21 Jac.
cap. 2. Concealors.
c 21 Jac. cap. 4.
Informers.
See the 3. part of
the Inst. cap.
against vexatious
relators, Infor-
mers, &c.
d Attornies Rot.
Par. 20 E. 1. Rot. 4.
*De Apprenticiis &
Attornatis.* 15 R. 2.
nu. 28. 4 H. 4. c. 18.
33 H. 6. cap. 7.
See Rot. Parl.
13 H. 4. nu. 63.
not in print.
e 21 Jac. cap. 16.

fails, a good Law for ending of suits. Another at the same Parliament, cap. 8. to prevent and punish abuses in procuring of process of Superfedeas of the peace and good behaviour, out of his Majesties Court at Westminster, &c. whereby infinite vexations, troubles and charges of the subjects are prevented. Another at the same Parliament, ca. 23. for avoiding of veracious delays in causes by removing of actions and suits out of inferiour Courts, wherein the former abuse was veracious, grievous, and chargeable to the Subject. A branch of an Act at the same Parliament, cap. 16. for pleading of tender of amends in an Action of Trespasse, Quare claus. fregit, for a trespass by negligence, or involuntary, wherein the Defendant maketh no title, &c. an excellent and necessary Law for avoiding of trifling and veracious suits, especially in Champion Countreies. An Act at the same Parliament, ca. 2. against Monopolies and new projects, &c. a great quiet for the time to come. Anno 3 Caroli Regis nunc, cap. 1. The petition of Right concerning the rights and liberties of all the subjects of this Realm for their repose and quiet. Lastly, the repeal of so many obsolete penal Statutes is a great mean of diminution of suits.

See the 3 part of the Inst. cap. against Monopolists and Projectors 3 Car. Regis c. 1. 21 Jac. ca. 28. 3 Car. ca. 4.

For the abovesaid general causes, viz. Peace and Plenty, long may they happily by the goodness of God continue without abuse within this Realm.

The Kings Bench hath authority for great misprisions and offences, to adjudge and inflict corporal punishment, as Whilory, Papers, and the like: whereof you may read many precedents in the Third part of the Institutes, pag. 219, 220.

C A P. VIII.

The Court of Chancery.

¶ *The Antiquity of this Court.*

25 E. 3. ass. p. 24. and the Preface to the third book of Reports. History of Ely, Hugo Petroburchensis, Leland. Fortesc. cap. 17.

In the second book of the History of Ely, written in the Reign of King Stephen soon after the Conquest. * Curia Canc. Nota.

Mirror ca. 1. §. 3. & vide ca. 5. §. 5. par le enroulements de pardon le Roy in le Chancery en temps le Roy Alfred. King Alfred began to reign anno Dom. 872. and was Father to King Edward Senior Father of the said Athelstane. * Error Polydori.

Firzh. Stephen tempore H. 2. in the end of Stows survey of Lond. Brañon fo. See Glanv. li. 12. ca. 1. & 5. &c. Fleta li. 2. ca. 12.

W. 2. 13 E. 1. c. 1. 13 E. 1. ca. 23, 24.

Certain it is, that both the British and Saxon Kings had their Chancellors and Court of Chancery, the only Court out of which original Writs do issue: As taking some few examples before the Conquest.

Edward the Confessor had Reinbald his Chancellor. This Edward granted many Mannors, Lands, &c. and Franchises to the Abbot of Westminster, and endeth his Charter thus. Ad ultimum, cartam istam sigillari jussi, & ipse manu mea propria signum Crucis impressi, & idoneos testes annotari præcepi: and amongst those witnesses this you shall find, Swardus notarius ad vicem Reinbaldi regis dignitatis Cancellarii hanc cartam scripsi & subscripsi. He had also Lefrick to his Chancellor.

King Etheldred also had a worthy name, and a worthy man to his Chancellor. Rex Etheldredus statuit atque concessit quatenus Ecclesiam de Elye ex tunc & semper in regis * curia Cancellariæ ageret dignitatem, &c. This King began his reign, Anno domini 978. which albeit it was void in Law to grant the Chancellorship of England in succession, yet it proveth that then there was a Court of Chancery.

King Edgar had Adulph: King Edred had Thurkettle: King Edmond the same: King Athelstane Wolsine, their Chancellors, &c.

For further proof that there was a Court of Chancery before all these Kings time, out of which Writs remedial issued, as they do to this day: hear what the Mirror saith, Le primer constitutions ordenus per les viels roys, &c. ordeine fuit que chescun eit del' Chancery le Roy brief remedial a son pleint sans difficultie. Hereby it appeareth that in the Reign of King Alfred there was a Court of Chancery out of which Writs remedial issued, which was not then instituted, but affirmed to be a Court then in esse, and enacted that out of that Court Writs remedial should be granted without difficulty, which Law continueth to this day. And thus much touching the Court of Chancery before the Conquest: and therefore * Polydor Virgil, who affirmeth this Court to come in with the Conqueror, perperam erravit.

In a Charter to the Abbot of Westminster by William the Conqueror, and amongst the witnesses it is written thus, Ego Mauritius regis Cancellarius favendo legi, & sigillavi. Arfastus Bishop of Northelham in Norff. who translated his See to Thetford, was also Chancellor to the Conqueror.

Cancellarii Angliæ dignitas est, ut secundus à rege in regno habeatur, ut altera parte sigilli regii, quod & ad ejus pertinet custodiam, propria signet mandata, &c.

Omnia brevia de pace, &c. irrotulari debent in rotulo Cancellariæ.

Fleta saith, Est inter cætera quoddam officium quod dicitur Cancellaria, quod uno provido & discreto, ut Episcopo vel clerico, magnæ dignitatis debet committi simul cum cura magni sigilli regni, cujus substituti sunt Cancellar' omnes in Anglia, Hibernia, Wallia, & Scot' omnesque sigilla regis custodientes ubique præter custodem sigilli privati. Cui associantur clerici honesti, circumspecti domino regi jurati, qui in legibus & consuetudinibus Anglicanis notitiam habeant plenioram, quorum officium sit supplicationes & querelas conquerentium audire & examinare, & eis super qualitatibus injuriarum ostensarum debitum remedium exhibere per breviam regis.

Breve de forma donationis in revertere satis est in usu in Cancellaria.

In Cancellaria & in registro Cancellariæ.

For

For the antiquity and authority of this book of the Register of the Chancery, see the first part of the Institutes, Verb. per le Register, and in the Epistle to the ninth book of my Commentaries.

1 part Instit.
Sec. 101. Epist.
lib. 9.

But to proceed, (omitting many others) Robert Parning took the state and degree of a Serjeant at Law in 3 E. 3. and became the Kings Serjeant, and for his profound and excellent knowledge of the Laws, in Trin. Term 14 E. 3. was 24. Julii by Writ created Chief Justice of England: in which office he remained until the 15 of December following, on which day he was made Lord Treasurer of England. In that office he remained until the 15 year of the reign of the same King, and then was constituted Lord Chancellor. This man knowing that he that knew not the Common Law could never well judge in equity (which is a just correction of Law in some cases) did usually sit in the Court of Common Pleas, (which Court is the Lock and Key of the Common Law) and heard matters in Law there debated, and many times would argue himself, as in the report of 17 E. 3. it appears.

Vid. postea ca. 10.
of the Court of
Common Pleas.

Ubi non est scientia,
non est conscientia.

17 E. 3. fo. 11. 14.
23 27.

In the 30 year of E. 3. Sir Robert Thorpe Chief Justice of the Common Pleas (not Sir William Thorpe Chief Justice of England, convicted of sordid bribery) a man of singular judgment in the Laws of this Realm, was constituted Lord Chancellor of England. And in the Parliament Anno 45 E. 3. a grievous complaint was made by the Lords and Commons, that the Realm had been of long time governed by men of the Church in disherison of the Crown, and desired that Lay men only be principal Officers, &c.

Rot. Parl. 45 E. 3.
Rot. 22. du. 15.

After the decease of Sir Robert Thorpe 5 Julii Anno 46 E. 3. Sir John Knevet Knight, Chief Justice of England, a man famous in his profession, was made Lord Chancellor of England, who deceased in Anno 50 E. 3. &c.

In perusing the Rolls of Parliament in the times of these Lord Chancellors, we find no complaint at all of any proceeding before them. But soon after, when a Chancellor was no professor of the Law, we find a grievous complaint by the whole body of the Realm, and a Petition that the most wise and able men within the Realm might be chosen Chancellors, and that he seek to redress the enormities of the Chancery. But leaving many other Records to their proper places hereafter, we will conclude this point concerning the antiquity and jurisdiction of this Court with the opinion of all the Judges of the Realm in 9 E. 4. in a suit in the Court of Exchequer against the Clerk of the Pimper in the Chancery upon his account in the Exchequer, where it was holden by all the Justices in the Exchequer Chamber, that all the Courts of the King have been time out of memory, so as a man cannot know which of them is the ancientest Court. And Justice Yong the plaintiff demanded of the Justices, what if the Chancellor command me upon a pain, that I shall not sue him? To whom Billing the Chief Justice answered, You are not bound to obey it, because that commandment is against Law: But seeing that toucheth upon the Jurisdiction of the Court, let us in the next place handle that point.

Rot. Parl. 5 R. 2.
nu. 20.

The Jurisdiction of the Court.

In the Chancery are two Courts, one ordinary, Coram Domino Rege in Cancelleria, *a* wherein the Lord Chancellor or Lord Keeper of the Great Seal proceeds according to the right line of the Laws and Statutes of the Realm, secundum legem & consuetudinem Angliæ. *b* Another extraordinary according to the rule of equity, secundum æquum & bonum, And first of the former Court.

48 E. 4. 5. 9 E. 4. 15
14 E. 4. 7.
b Stan. prær. c. 20.
fo. 65. b.
Pl. com. fo. 72.

c He hath power to hold plea of Scire fac' for repeal of the Kings Letters Patents, of Petitions, monstrans de droits, traverses of Offices, Partitions in Chancery, of Scire fac' upon recognizances in this Court, Writs of Audita querela, and Scire fac' in the nature of an Audita querela to avoid executions in this Court; *d* dowments in Chancery, the Writ de dote assignanda upon offices found, execution upon the Statute Staple, or Recognizance in nature of a Statute Staple upon the Act of 23 H. 8. but the execution upon a Statute merchant is returnable either into the Kings Bench, or into the Common pleas, and all

c Rot. Parl. 8 H. 4.
nu. 122. 2 R. 3. 1.

d Regist. 297.
F. N. B. 263.
Stanf. prær. ca.
Rot. Parl. 18 E. 3.
nu. 41. 42.

a 13 E.2. coram
Rege. Rot. 51.
London.

b 10 E. 3. 61.
24 E. 3. 65. 73.

c 18 E. 3. 25. 17.
aff. 24.
14 Eliz. Dier 315.
Pl. com. 393. a.
d In Par. Tr. 9 H. 6.
Rot. 5. int. placita
regis.

¶ *Officina Justitiæ*

Fleta lib. 2. ca. 12.
Brañ. li. 5. fo. 413.
Britton ca. 84.
Fleta lib. 6. ca. 35,
& 36.

personal actions by or against any Officer or Minister of this Court in respect of their service or attendance there. *a* In these if the parties descend to issue, this Court cannot try it by Jury, but the Lord Chancellor or Lord Keeper delivereth the Record by his proper hands into the Kings Bench to be tried there; because for that purpose both Courts are accounted *b* but one, and after trial had to be remanded into the Chancery, and there Judgment to be given. But if there be a demurrer in Law, it shall be argued and adjudged in this Court. Nota, the legal proceedings of this Court be not inrolled in Rolls, but remain in filaciis, being filed up in the Office of the Pety-bag. *c* Upon a Judgment given in this Court a Writ of Error doth lye retournable into the Kings Bench: *d* The stile of the Court of the Kings Bench is coram rege (as hath been said), and the stile of this Court of Chancery is coram domino rege in Cancellaria, & additio probat minoritatem. And in this Court the Lord Chancellor or the Lord Keeper is the sole Judge: and in the Kings Bench there are four Judges at the least.

This Court is *Officina Justitiæ*, out of which all original Writs and all Commissions which pass under the Great Seal go forth, which Great Seal is *Clavis regni*, and for those ends this Court is ever open.

Of this Court Fleta ubi supra saith, Dicuntur Brevia cum sint formata ad similitudinem regulæ juris, quæ breviter, & paucis verbis intentionem proferentis exponunt, sicut regula juris, rem quæ est breviter enarrat: non tamen ita debet esse brevis quin rationem & vim intentionis contineat. Et sunt quædam Brevia formata sub suis casibus, & quædam de cursu quæ consilio totius regni sunt approbata, quæ quidem mutari non poterunt absque eorundem contraria voluntate. Sunt & Brevia ex eis sequentia quæ dicuntur judicialia, & sæpius variantur secundum varietatem placitorum proponent' & respondent', petentis & excipientis & secundum varietatem responsionum: Sunt & quædam quæ dicuntur magistralia & sæpius variantur secundum diversitatem casuum, factorum & querelarum, & quorum quædam sunt personalia, & quædam realia, & quædam mixta, secundum quod sunt actiones diversæ vel variæ, quia tot erunt formulæ brevium, quot sunt genera actionum, quia non potest quis sine brevi agere, præcipue de libero tenemento suo, quia non tenetur quis respondere sine brevi, nisi gratis voluerit, & cum hoc fecerit quis, ex hoc ei non injurabitur: volenti enim & scienti non fit injuria. De eadem autem re, plures alicui competere poterunt actiones, ordine autem, ut convenit, observato. Breve quidem regis in se nullam debet continere falsitatem, nec aliquem errorem: apparere debet vel in prima sui figura non vitiosum, maxime si fuerit patens sive apertum, quia originalia quædam sunt clausa, & quædam aperta. Et sive aperta, sive clausa, apparere non debent abrasa, nec abolita: & si inveniatur abrasio, tunc refert quo loco, à quo, & quando. Quo loco? videlicet utrum in narratione facti vel juris. Si autem in narratione facti, cadet coram Just' quasi suspectum. Facta enim & nomina mutari non debent, sed jura ubique scribi possunt. A quo? utrum videlicet per Clericum Cancellar' cui autoritas data fuerit, vel ausu temerario per alium sicut Clericum Justic', vel Vic' ad procuracionem alicujus partis: quo casu omnes agentes & consentientes tanquam falsarii puniantur. Item quando? videlicet utrum hoc fiat antequam bre' in curia resuscitatum & publicatum, vel post. Si autem post, erit breve suspectum & cadet, si a tenente fuerit hoc calumpniatum. Fiunt autem brevia judicialia in Cancellaria ex recognitionibus & contractibus habitis & in Rotulis Cancellariæ irrotulatis & ex recordo Cancellario & Clericis sibi associatis per hanc constitutionem concessio. Quia de hiis quæ recordata sunt coram Cancellar' Domini Regis, & ejus Justic' qui recordum habent & in rotulis eorum irrotulantur, non debet fieri processus placiti per summonitionem, vel attachiament', essonia, visus t're & alias solemnitates Cur' sicut fieri consuevit ex contractibus, & conventionibus factis extra curiam. Observandum est de cætero quod ea quæ inveniuntur irrotulata coram hiis qui recordum habent vel in finibus contenta, cum sunt contractus sive conventiones vel obligationes sive servicia aut consuetudines recognitæ sive alia quæcunq; irrotulata quibus Cur' regis sine juris & constitutionis offensâ auctoritatem præstare potest, talem de cætero habeat vigorem, quod non sit

fit necesse de hiis placitare in posterum, sed cum venerit querens ad Curiam Domini Regis, si recens sit cognitio, vel finis, viz. infra annum per bre levatus, statim habeat bre de executione illius recognitionis factæ: & si forte à majore tempore transacto facta fuerit illa recognitio, vel finis levatus; præcipiatur Vic' quod scire fac' parti de qua fit querimonia, quod sit ad certum diem, ostens. si quid sciat dicere quare hujus irrotulata vel in fine contenta executionem habere non debeant. Et si ad diem venerit, & nihil sciat dicere quare executio fieri non debeat, præcipiatur Vic' quod rem irrotulatam vel in fine contentam exequi fac'. Eodem modo mandetur ordinario in suo casu, observato nihilominus quod inferius dicitur in statuto de medio qui per judicium aut recognitionem est obligatus. Ex hac quidem constitutione oriuntur bria judicialia in Cancellaria sicut coram ipsis Justic. Ipsi autem collaterales & socii Cancellarii esse dicuntur præceptores, eo quod bria causis examinatis remedialia fieri præcipiunt, & hoc quoque cum fine denar' ad opus Domini Regis, & quoque sine fine, eo quod omnia bria non sunt omni tempore æquipollentia. De brevibus autem coram Justic' ad primas Assisas cum in partes illas venerint, fines capere non consueverunt, eo quod ad tempus itineris Justic', ligat constitutio Magnæ Cartæ quæ talis est; *Nulli justitiam negabimus, vendemus, vel differemus*: sed non inhibetur quin fines capiantur pro brevibus possessionum, & actionum personalium, pro celeriore Justitia habenda; qui quidem pro qualitatibus & quantitativibus portionem concessi in eisdem brevibus imbreviabuntur, & in rotulis Cancellariæ irrotulantur. Qui quidem rotuli singulis annis ad Scaccar' liberabuntur, & fines hujus extrahantur & per summon Scaccarii leventur. Clausula vero finis talis est, *Et cape securitatem a prefato tali de 40 solid. ad opus nostrum pro hoc brevi*. Verba autem extract' de Scaccario sunt hæc. *De A. de B. pro brevi habend', dim' marc' vel amplius prout finis factus fuerit*. Conceduntur aliquando conquerentibus ob favorem paupertatis quod ubi præsumi potest sic quod plegios invenire non possunt de prosequend' clamorem suum quod securitatem præstent Vic' per fidei interpolationem suam, non tamen in actionibus personalibus hoc concedendum est. Habet & Rex Clericos in officio illo expertos & legales qui formulas brevium cognoscunt, qui approbata admittunt & defectiva omnino repellunt, quibus omnia bria priusquam ad sigillum proveniunt cum deliberatione distincte & aperte in ratione, dictione, litera & syllaba examinare injunctum est. Et sciendum quod nullum bre nisi per manus eorundem ad sigillum debet admitti. Habet etiam sex Clericos suos prænotarios in officio illo, qui cum Clericis memoratis familiares, &c. esse consueverunt & præcipue ad victum & vestitum qui ad bria scribenda secundum diversitates querelarum sunt intitulati. Et qui omnes pro victu & vestitu de proficuo sigilli in cujuscunque usus pervenerit debent honeste inveniri. Sunt etiam nihilominus Clerici juvenes & pedites quibus de gratia Cancellar' concessum est pro expeditione populi bria facere cursoria, dum tamen sub advocacy Clericorum superiorum fuerint qui eorum facta in eorum receperint pericula. Et in quolibet bri debet scribentis nomen inbrevari qui warrantizare poterint in peccatores si necesse fuerit. Et ne præfati Clerici superflua petant stipendia pro scriptura sua, constitutum est quod tam Clerici Justic' quam Cancellar' de solo denario pro scriptura unius brevis se teneant contentos.

And this Court is the rather always open, for that if a man be wrongfully imprisoned in the Vacation, the Lord Chancellor may grant a Habeas corpus and do him Justice according to Law, where neither the Kings Bench nor Common Pleas can grant that Writ but in the Term time; but this Court may grant it either in Term time or Vacation. So likewise this Court may grant Prohibitions at any time either in Term or Vacation: which Writs of Prohibition are not returnable: but if they be not obeyed, then may this Court grant an Attachment upon the prohibition returnable either in the Kings Bench or Common Pleas.

The Author of that Book speaking of the Court of Chancery, and of the jurisdiction it then had, saith, Curia Cancellariæ Regiæ est Curia ordinaria pro brevibus originalibus emanandis, sed non placitis communibus tenendis.

Divers Acts of Parliament give authority to the Lord Chancellor to hear and

New Tales, or
New Narrations,
written about the
beginning of E. 3^d

27 E. 3. cap. 13.
2 R. 3. f. 3. 13 E. 4.
Dier 12 El. 288.
a. resolve.

¶ Officers and Ministers of this Court.

See the 2. part of the Instit. W. 2. c. 24. Verb. Clerici de Cancellaria.

* In the Parliament Roll of 5 R. 2. nu. 23. they are called chief Clerks

and determine divers offences and causes in the Court of Chancery, which is ever intended in this Court proceeding in Latin, secundum legem & consuetudinem Angliæ, and the Defendant shall not be sworn to his answer, nor examined upon Interrogatories, and upon issue joyned it shall be tried in the Kings Bench, Ut in similibus casibus solet. But our purpose is not to enumerate all these Statutes, for our aim is principally at the general jurisdiction of this Court.

The Officers and Ministers of this Court of Common Law do principally attend and do their service to the Great Seal, as the * twelve Masters of the Chancery, whereof the Master of the Rolls is the chief, who by their original institution, as it is proved before, should be expert in the Common Law, to see the forming and framing of original Writs according to Law, which are not of course; whereupon such are called in our ancient Authors Brevia Magistralia. The Clerk of the Crown, the Clerk of the Hammer, the Sealer, the Chase war, the Controller of the Chancery, twenty four Curstors for making Writs of course or formed Writs according to the Register of the Chancery, the Clerk of the presentations, the Clerk of the Faculties, the Clerk examiner of Letters Patents, the Clerks of the Pettibag, and the six Attornies. The process in this Court is under the Great Seal according to the course of the Common Law.

Having spoken of the Court of ordinary jurisdiction, it followeth according to our former division, that we speak of the extraordinary proceeding according to the rule of equity, secundum æquum & bonum, wherein we will pursue our former order.

¶ Of the Antiquity of this Court of Equity.

Henry Beaufort son of John of Gaunt Bishop of Winch. Cardinal of St. Eusebius, Lord Chancellor in the beginning of the Reign of H. 6. and in that Kings Reign John Kemp Cardinal of S. Rufeline Archbishop of York, Lord Chancellor. See Rot. Parl. 28 H. 6. nu. 10. & 35 H. 6. fol. 3. a 36 E. 3. cap. 9.

Albeit our ancient Authors, the Mirror, Glanvill, Bracton, Britton and Fleta, do treat of the former Court in Chancery, and of original Writs and Commissions issuing out of the same, yet none of them do once mention this Court of Equity. We have also considered what cases in this Court of Equity have been reported in our books, and we find none before the Reign of H. 6. and in that Kings time, and afterwards plentifully, we then turned our eyes to Acts of Parliaments and Parliament Rolls.

a Some have thought that the Statute of 36 E. 3. gave the Chancellor his first authority for his proceeding in course of equity, by which it is enacted, That if any man think himself grieved contrary to any of the Articles above written, or others contained in divers Statutes, will come to the Chancery or any for him, and thereof make his complaint, he shall presently have there remedy by force of the said Articles and Statutes, without elsewhere pursuing to have remedy. But certainly this Act giveth the Chancellor no power to proceed in course of equity, but that he grant to the party grieved original Writs which are called remedial grounded upon any Statute for his relief, and there is no Statute that gives the party grieved remedy in equity. Lastly, the last words of the Act, without elsewhere pursuing to have remedy, do manifest that the meaning of the makers of the Act is to direct the party to be relieved by the Common Law, by actions upon these Statutes, and not elsewhere.

Rot. Par. 13 R. 2. nu. 30.

In the Parliament holden 13 R. 2. the Commons petitioned to the King, That neither the Chancellor nor other Counsellor do make any order against the Common Law, nor that any Judgment be given without due process of Law. Whereunto the Kings answer was, The usages heretofore shall stand, so as the Kings royalty be saved. In the same Parliament another petition was, That no person should appear upon a Writ *De quibusdam certis de causis*, before the Chancellor or any other of the Council, where recovery is therefore given by the Common Law: Whereunto the Kings answer is, The King willeth as his Progenitors have done, saving his regality.

17 R. 2. cap. 6.

In the Parliament holden in 17 R. 2. it is enacted at petition of the Commons, That forasmuch as people was compelled to come before the Kings Council, or in Chancery, by Writs grounded upon untrue suggestions, that the Chancellor for the time being presently after that such suggestions be duly found and proved untrue, shall have power to ordain and award damages according to his

his discretion to him which is so travelled unduly, as is aforesaid. This Act extendeth to the Chancelor proceeding in course of equity, and extendeth not to a demurrer in Law upon a bill, but upon hearing of the cause upon these words in the Act [duly found and proved:] and this is the first Parliament that I find touching this matter. And in the Roll of the same Parliament, I find the first decree in Chancery that ever I observed, the effect whereof was: John de Windfor complaineth and requireth to be restored to the manors of Rampton, Cottenham and Westwick with their appurtenances in the County of Cambridge, the which were adjudged to him by the Kings award, then in the possession of Sir John Lisley, and now withholden by Sir Richard le Scroope, who by Champerty bought the same: the cause was this. Upon a petition of Windfor against Lisley, they both committed the matter to the Kings order, the King committed the same to the Council, they after digesting of the same made a decree for Windfor under the Privy Seal, they send warrant to the Chancelor to confirm the same, which was done under the Great Seal by a special Injunction to Lisley, and to write to the Sheriff to execute the same. After this, Lisley by petition to the King requireth that the same may be determined at the Common Law, notwithstanding any former matter: the King accordingly by Privy Seal giveth warrant to the Chancelor to make a Superfedeas, the which was done by Privy Seal, after which Sir Ric. le Scroope bought the same. Upon the ripping of the whole matter, this sale was thought no Champerty, whereupon it was adjudged, that the said Windfor should take nothing by his said suit, but to stand to the Common Law, and that the said Sir Richard should go without day.

7 E. 4. fol. 14.

Rot. Par. 17 R. 2. nu. 10. William Courtney son of Hugh Earl of Devon, was then Bishop of Cant. and Lord Chancelor when this decree was made.

Champerty.

The Commons petitioned that no Writs or Privy Seals be sued out of the Chancery, Exchequer or other places to any man to appear at a day upon a pain, either before the King and his Council, or in any other place, contrary to the ordinary course of the Common Law: whereunto the King answered: That such writs should not be granted without necessity.

Rot. Par. 2 H. 4. nu. 69.

Amongst the petitions of the Commons you shall find this, That all Writs of Subpoena and Certis de causis, going out of the Chancery and the Exchequer, may be enrolled, and not granted of matters determinable at the Common Law, on pain that the Plaintiff do pay by way of debt to the Defendant forty pound: whereunto is answered, The King will be advised.

Rot. Par. 3 H. 5. nu. 46. Edmond Stafford Archb. of York, was Lord Chancelor at this time.

It is enacted, to endure until the next Parliament, that the exception (how that the party hath sufficient remedy at the Common Law) shall discharge any matter in Chancery. At the next Parliament you shall find a petition in these words. No man to be called by Privy Seal or Subpoena to answer any matters but such as have no remedy by the Common Law, and that to appear so by the testimony of two Justices of either Bench, and by Indenture between them and the Plaintiff, which Plaintiff shall always appear in proper person, and find surety by recognizance to prosecute with effect the matters of the Bill only, and to answer damages if the same fall out against the Plaintiff.

Rot. Par. 9 H. 5. nu. 25. Rot. Par. 1 H. 6. nu. 41.

Never good Petition in Parliament dieth, but first or last will take effect Vid. sup. pag. 32.

But in An. 15 H. 6. for a perpetual Law, and for the true jurisdiction of this Court it is enacted in these words.

Item, Forasmuch as divers persons have before this time been greatly grieved by Writs of Subpoena, purchased for matters determinable by the Common Law of this land, to the great damage of such persons so vexed, in subversion, and impediment of the Common Law aforesaid; Our Sovereign Lord the King will, that the Statutes thereof made shall be kept after the form and effect of the same. And that no Writ of Subpoena be granted from henceforth till surety be found to satisfy the party so grieved and vexed for his damages and expences, if so be that the matter may not be made good, which is contained in the bill. In Anno 31 H. 6. cap. 2. There is a Proviso in these words. Provided that no matter determinable by the Law of this

39 H. 6. fol. 25. 4 E. 4. 8. 14 E. 4. 1. 16 E. 4. 9. b. 18 E. 4. 13. 6 E. 4. 10. b. 7 H. 7. 12. Forf. cap. 34. Rot. Par. 14 E. 4. nu. 5. William Sherfords case Doct. & Stud. cap. 18. 24. 50. 31 H. 6. cap. 2.

Realms

Realm shall be by the said Act determined in other form then, after the course of the same Law in the Kings Courts having determination of the same Law.

Trin. 2 Jac.

* Pasch. 29 El. in Scaccario Woods case.

Vide 7 El. Dier 238. Scignior, Shandois case.

¶ Reasons: 1. A majori ad minus. Rot. Par. 2 R. 2. n. 18.

Rot. Par. 13 R. 2. n. 10.

2. Regula.

3.

37 H. 6. 14.

27 H. 8. 18.

Trin. 3 Jac. Reg. in Scaccario. Sir Thomas Themilthops case.

Waller's case.

¶ The Judge of this Court of Equity, &c.

Tr. 2 Jac. Regis, upon suit made to the King for erecting of a new office for taking of surety according to the said Act of 15 H. 6. c. 4. the King referred the cause to Popham Chief Justice, who upon conference with the Judges in Fleet-street, resolved that the surety was by force of that Act to be by obligation, and to be made by the party grieved himself, because it concerneth his damages and costs, and the Court was to set down the form and sum of the obligation, and in the end the suit prevailed not.

* Pasch. 29 Eliz. in Scaccario, In Woods case adjudged upon the Statute of 2 E. 6. c. 13. for the like reason, that the forfeiture for non-payment of Tithes shall go to the party grieved.

1 Rot. Par. 2 R. 2. n. 18. The high Court of Parliament relieveth but such as cannot have remedy but in Parliament.

The Parliament for matters determinable at the Common Law doth remit the parties thereunto.

2. Nunquam decurritur ad extraordinarium, sed ubi deficit ordinarium.

3. Whereas matters of fact by the Common Law are triable by a Jury of twelve men, this Court should draw the matter ad aliud examen, that is, to judge upon deposition of witnesses, which should be but evidence to a Jury in actions real, personal, or mixt.

This Court of Equity proceeding by English Will is no Court of Record, and therefore it can bind but the person only, and neither the estate of the Defendants lands, nor property of his goods or chattels.

Egerton Lord Chancellor imposed a fine upon Sir Tho. Themilthorp Knight, for not performing his decree in Chancery concerning Lands of inheritance, and estreated the same into the Exchequer: and upon process the party appearing pleaded that the fine was imposed by the Lord Chancellor for not performance of his decree, and that he had no power to assess the same. The Attorney General confessed the plea to be true, & petit advisamentum Curie, concerning the power of the Chancellor in this case: and upon debate of the question in Court, and good advisement taken, it was adjudged that the Lord Chancellor had no power to assess any such fine, for then by a mean he might bind the interest of the land where he had no power, but of the person only, and thereupon the said Sir Thomas Themilthorp was discharged of the said fine.

Afterward the said Lord Chancellor decreed against Waller certain lands, and for not performance of the decree imposed a fine upon him, and upon process out of the Court of Chancery extended the lands that Waller had in Midd. &c. whereupon Waller brought his Assise in the Court of Common pleas, where the opinion of the whole Court agreed in omnibus, with the Court of Exchequer.

The Lord Chancellor or the Lord Keeper is sole Judge both in this Court of Equity, and in the Court concerning the Common Laws: but in cases of weight or difficulty he doth assist himself with some of the Judges of the Realm, and no greater exception can be taken hereunto then in case of the Lord Steward of England being sole Judge in trial of the Nobility, who also is assisted with some of the Judges.

For this Court of Equity the ancient rule is good. Three things are to be judged in Court of Conscience: Covin, Accident, and breach of confidence.

All covins, frauds, and deceits, for the which is no remedy by the ordinary course of Law.

Accident, As when a servant, an Obligor, Mortgagee, &c. is sent to pay the money on the day, and he is robbed, &c. remedy is to be had in this Court against the forfeiture, and so in the like.

The third is breach of trust and confidence, whereof you have plentiful authorities in our books.

The

The case in the Chancery between the Earl of Worcester and others Plaintiff, and Sir Moyl Finch and Eliz. his wife Defendants, was this, The Queen being seised of the Mannor of Raveston and of certain Lands in Stokegoldington, (which the Plaintiff pretended to be a Mannor either in right or reputation) granted by her Letters Patents the Mannors of Raveston and Stokegoldington to the said Sir Moyl and John Awdelye, and their heirs: but this was upon confidence, that they should grant the Mannor of Raveston to Sir Thomas Heneage and Anne his Wife, and to the heirs of Anne: and the Mannor of Stokegoldington to Sir Thomas and Anne, and the heirs of Sir Thomas. Sir Moyl and Awdelye by deed indented and inrolled Termino Trin. 1588. 30 Eliz. in this Court for a thousand pound bargained and sold to Sir Thomas Heneage and his Wife the Mannors of Raveston and Stokegoldington, and the Site of the Priory of Raveston in the County of Buck. and all other their Lands, Tenements and Hereditaments in Raveston, Weston, Pedington, and Stokegoldington in the County of Buck. To have and to hold the Mannor of Raveston and the Site of the said Priory, and in all the premises in Raveston, Weston, Pedington, and Stokegoldington (other then the said Mannor of Stokegoldington) to the said Sir Thomas and Dame Anne, and the heirs of the said Dame Anne: and to have and to hold the said Mannor of Stokegold. to the said Sir Thomas and Dame Anne, and to the heirs of Sir Thomas. Sir Thomas had issue by the said Dame Anne the said Elizabeth one of the Defendants his only child, and afterwards the said Dame Anne died: the Defendant alleged that Sir Thomas was disseised of Stokegoldington, and the Plaintiff denied it. And after Sir Thomas by deed indented and inrolled, bargained and sold the Mannor of Stokegoldington to the Plaintiff for payment of his debts and died: and for payment of his debts, they exhibited their Bill against Sir Moyl, and the said Elizabeth his wife, for the said Mannor of Stokegoldington, and the Lord Chancellor decreed it for the Plaintiff. And upon a Petition preferred by the Defendants to Queen Elizabeth, she referred the consideration of the whole case to all the Judges of England: and after hearing of the Counsel of both parts on several days, and conference between themselves, these points for rule in equity were resolved. First, that if there were any disseison, that nothing passed to the Plaintiff either in right or equity, for the disseisor was subject to no trust, nor any Subpoena was maintainable against him, not only because he was in the post, but because the right of inheritance or freehold was determinable at the Common Law, and not in the Chancery, neither had Cesti que use (while he had his being) any remedy in that case. Secondly, it was resolved by all the Justices, that admitting that Sir Thomas Heneage had a trust, yet could not be assign the same over to the Plaintiff, because it was a matter in privity between them, and was in nature of a chose in action, for he had no power of the Land, but only to seek remedy by Subpoena, and not like to cesti que use, for thereof there should be possessio fratris, and he should be sworn on Juries in respect of the use, and he had power over the Land by the Statute of 1 R. 3. ca. and if a bare trust and confidence might be assigned over, great inconvenience might thereof follow by granting of the same to great men, &c. Thirdly, when the Land descended to Elizabeth one of the Defendants, as heir to her mother, and the trust descended to her from her father, the trust was drowned and extinguished. Fourthly, when any title of freehold or other matter determinable by the Common Law come incidently in question in this Court, the same cannot be decided in Chancery, but ought to be referred to the trial of the Common Law where the party grieved may be relieved by error, attain, or by action of higher nature. And when the suit is for evidences, the certainty whereof the Plaintiff surmisseth he knoweth not, and without them he supposeth that he cannot sue at the Common Law: It was resolved that if the Defendant make no title to the Land, then the Court hath full jurisdiction to proceed for the evidence; but if he make title to the land by his answer, then the Plaintiff ought not to proceed, for otherwise by such a surmise, inheritances, freeholds, and matters determinable

Mich. 42 & 43 El.
in Cancellar. Sir.
Moyl Finches case

A Disseisor subject
to no trust.

A trust cannot be
assigned over.
22 El. Dier fo. 359.
pl. 50.

Matters determinable by the Common Law cannot be decided in Chancery.
Suit for Evidence.

by the Common Law shall be decided in Chancery in this Court of Equity. And thus were these points resolved by Sir John Popham, Sir Edmond Anderfon, Sir William Periam, and Walmeslye, Gawdye, Fenner, and Kingesmill Justices, and Clarke and Savill Barons of the Exchequer, and all this amongst other things they certified under their hands into the Chancery, and thereupon the former decree was reversed. And in debating of this case it was resolved by the two Chief Justices, Chief Baron, and divers other Justices, that if a man make a conveyance, and express an use, the party himself or his heirs shall not be received to aver a secret trust, other then the express limitation of the use, unless such trust or confidence do appear in writing, or otherwise declared by some apparent matter. And Popham said, that covin accident, and breach of confidence were within the proper Jurisdiction of this Court.

Mich. 39 & 40 El.
in Cancellar'.

Thomas Throgmorton Esquire exhibited a Bill in this Court against Sir Moyl Finch Knight, claiming a Lease of the Mannors of R. and S. for many years to come, and shew clear matter in equity to be relieved against a forfeiture pretended to by Sir Moyle for breach of a condition where there was no default in the Plaintiff, &c. Unto which Bill the Defendant pleaded this plea, that for the trial of the forfeiture of which Lease, he made a Lease for years to one privileged in Exchequer, who brought an Ejectione firmæ against the Plaintiff, and upon pleading a demurrer in Law, the Lessee had Judgment to recover against Thomas Throgmorton (now Plaintiff in Chancery:) whereupon Thomas Throgmorton brought a Writ of Error in the Exchequer Chamber, where upon due proceeding the judgment was affirmed, and demanded judgment, if after these judgments given at the Common Law he ought to be drawn to make any further answer in this Court of Equity. And Egerton Lord Chancellor delivered his opinion in Court, that the Defendant should answer to the bill: and so far as much as the case was of great consequence, the consideration of the demurrer was by the Queen referred to all the Judges of England: before whom the Council of Throgmorton said, that the intent of the Lord Chancellor was not to impeach the said judgments, but confessing the said judgments, to be relieved upon matter in equity: As if a man hath (as he is advised) two matters to aid him, matter at the Common Law, and matter in Equity, and being impleaded at the Common Law, doth by advice of all his counsel assaye the Common Law where his adversary prevailleth against him, and hath judgment accordingly, yet in this case the party may, confessing the judgment, sue to be relieved upon a collateral matter in Equity: and thereupon they shewed some presidents in time of H.8.E.6.&c. and one in the point between Ward and Fulwood. But upon great deliberation it was resolved by all the Judges of England, that the plea of Sir Moyl Finch was good, and that the Lord Chancellor ought not to examine the matter in Equity after the Judgment at the Common Law: for though the Lord Chancellor (as hath been said) would not examine the judgment, yet he would by his decree take away the effect of the judgment: and for the presidents, they were grounded upon the sole opinion of the Lord Chancellor, and passed sub silentio. But that such a course should be permitted, it should be not only full of inconvenience, but directly against the Laws and Statutes of the Realm, against which no president or prescription can prevail: * which you may read at large in the Third part of the Institutes, ca. Præmunire. Which resolution of the Judges was signified by Popham Chief Justice to the Lord Chancellor, and thereupon no further proceeding was against Sir Moyl Finch, but his plea stood.

* 27 E.3.cap.1.
4 H.4.cap.22.&c.
in the preamble.
Doct. & Stud. 30.
W.2.ca.5.
Vid. Pasch. 5 E.4.
Coram rege Rot.
35. Sir Simon
Norres case.
Nota.
Mich. 37 & 38 El.
in Cancellar'.

In a case depending in Chancery by English bill between Mears Plaintiff and Saint-John and his wife Administratrix of John Alnion Defendant, the case was this: That the Intestate took the profits of the lands of the Plaintiff being within age by force of a trust reposed in him by the Father of the Plaintiff by his last Will, the yearly value of which lands was fourscore pounds per annum, and the Intestate took the profits from the 23 year of Queen El. until the 33 year of her reign, and wick parcel of the profits purchased lands in fee which descended to his heir, and left assets to his Administratrix one of the Defendants

dants to satisfie the Plaintiff, all debts paid. The question was, whether in this case the Administrator might not be charged in equity for the said mean profits. And Sir Thomas Egerton Master of the Rolls said, that he had seen a case in Chancery in Anno 34 H.6. resolved by all the Judges of England remaining in the Tower, that where the Feoffees to use took the profits of the land, and received the rents, and made their Executors, and died leaving assets to satisfie all debts over and above the said rents and profits, that the Executors should be charged to satisfie ceteris que use for the said rents and profits, and accordingly it was decreed in Mears case against the Defendant: but whether the heir should be contributory or no, it was doubted.

Withams case in the Chancery was, that a term for years was granted to the use of a feme sole, she took husband and died, whether the husband should have the use, or the Administrators of the feme, was referred to the Judges; and by them it was resolved, that the Administrators should have it, and not the husband, because that this trust of a feme was a thing in privacy, and in nature of an action, for which no remedy was but by Writ of Subpoena. And so it was resolved by the Justices in Waterhouses case, Hil. 8 Eliz. Eborum, for the trust runneth in privacy in this case, and a husband should not be tenant by the curtesie of an use, nor the Lord of the Villain should have it at the Common Law.

A man possessed of a term for years in Lands, by his last Will devised the same to one and the heirs of his body begotten, made his Executors and died; the Devisee entrench by the assent of the Executors, hath issue and alienes the term and dieth: this alienation barreth the issue, for a term for years cannot be entail. And afterwards Anno 31 Eliz. in a case depending in Chancery between Higgins and Milles it was certified by the Lord Anderson and Justice Walmesley (to whom it was referred) that no estate tail could be of a term, and that the alienation of the Devisee did bar the issue.

In a *Præmunire* between John Perrot Plaintiff, and T. M. H. W. and others Defendants, it was resolved by Sir Christopher Wray Chief Justice, and the Court of Kings Bench, that the Queen could not raise a Court of Equity by her Letters Patents, and that there could be no Court of Equity but by Act of Parliament, or by prescription time out of mind of man. But the Queen might grant power tenere placita or consilium de plea, for all must judge according to one ordinary rule of the Common Law, but otherwise it is of proceedings extraordinary without any certain rule.

These cases which upon so great and mature deliberation have been resolved by the Judges of the Realm, and whereunto we were privy and well acquainted with, we have thought good to report, and publish for the better direction in like cases hereafter.

He is made Lord Chancellor of England, or Lord Keeper of the Great Seal, per traditionem magni sigilli sibi per dominum regem, and by taking his Oath. Forma Cancellarium constituendi regnante Henrico secundo fuit appendendo magnum Angliæ sigillum ad collum Cancellarii electi.

Some have gotten it by Letters Patents, *a* at will, and *b* one for term of his life; but it was holden void, because an ancient office must be granted, as it hath been accustomed.

c It is enacted and declared, that the Common Law of this Realm is and always was, and ought to be taken, that the Keeper of the Great Seal of England for the time being hath always had, used, and executed, and from thenceforth may have, take, use, and execute the same and the like place, authority, preeminence, jurisdiction, execution of Laws, &c. as the Lord Chancellor of England for the time being lawfully used, &c. And so it appeareth in 18 E. 3. nu. 41. that the Lord Chancellor, or Lord Keeper for the time being ought to have consilium.

Pasch. 32 El. in Cancellaria. Withams case. Eborum. Vide 7 E. 4. 14. & 13 E. 4. 11. & 12.

Trin. 28 El. ad-judge in the Kings Bench, in Peacocks case.

31 Eliz. between Higgins and Mills in Cancellaria.

Mich. 26 & 27 El. Coram Rege. Perrots case. 10 H. 6. 15. in London by prescription, Nota, this resolution is against the Court of Requests. See hereafter cap. 9.

¶ How he is created Camden p. 131.

a 35 H. 6. 3. b. of Winch. 1 H. 6. nu. 16. *b* Cardinal Woolsey. *c* 5 El. ca. 18.

Rot. Par. 18 E. 3. nu. 41.

a Rot. Par. 1 H. 6.
nu. 13, 14.

13 R. 2. nu. 7.
Vide Camden
ubi supra.

b Stat. de forma
mittendi extract.
in Scaccarium.

Anno 16 E. 1.

Vet. Mag. Carta,
2 part. fo. 47. b.

c An. 27 E. 1.

de libertatibus
perquendis.

Vet. Mag. Carta,
part 1 fo. 126. &
2 part fo. 57, &c.

¶ Cancellarius
unde.

6 E. 4. 9.

Dier 3 Eliz. 137.

2 E. 3. 7. 17 E. 3. 59

21 E. 3. 47.

Lib. 2 fo. 148 &c.

¶ The Lord Chan-
cellors Oath.

d Rot. Par. 10 R. 2.
Rot. 8. the Oath
recited.

Vid. Rot. Parl.

11 H. 4. 1. nu. 28.

c Because he hath
power of Judica-
ture as is aforesaid.

f 10 R. 2. Rot.

Par. nu. 8.

2 H. 4. nu. 10.

15 E. 3. nu. 10.

15. 37. 41, 42.

g Laine is an an-
cient French word,
and signifieth to
hide.

b Rot. Parl. 10 R. 2.
nu. 6, 7, 8. &c. the
case of *Mic. de la*
Pole Chancellor of
England.

a I find that King H. 5. had two Great Seals, one of Gold, which he deli-
vered to the Bishop of Duresme, and made him Lord Chancellor of England, and
another of Silver, which King Henry the 5 delivered to the Bishop of London
to keep.

b William de Ayremin Garden des Rolles del' Chancelar' & ses compagnions
gardens del Grand Seale. At this time was Robert Burnell Bishop of Bath and
Wells Chancellor of England.

c It is to be observed, that where divers ancient Statutes speak of the Chan-
celloz and of his Lieutenant, it must of necessity be intended of such a Lieute-
nant as the Law doth allow of, and that cannot be of a Deputy, for the Chancel-
loz cannot make a Deputy; but Locum tenens is to be taken for one that holdeth
the place, or hath equal authority of the Chancellor, and that is Custos Magni
Sigilli: and this agreeth with the judgment of the said Parliament in 5 Eliz.
But all questions are now taken away by the said Act of 5 Eliz. and at this day
there being but one Great Seal, there cannot be both a Lord Chancellor and a
Lord Keeper of the Great Seal at one time, because both these are but one Of-
fice, as it is declared by the said Act.

It is said before, that the Chancellor by his ordinary power may hold plea of
Scire fac' to repeal the Kings Letters Patents under the Great Seal being al-
ways inrolled in this Court, which we (to make a true derivation of his name)
shall now particularly touch. This Writ of Scire fac' to repeal Letters Patents
doth lye in this ordinary course of Justice in three cases. The first, when the
King by his Letters Patents doth grant by several Letters Patents one and the
self same thing to several persons, the former Patentee shall have a Scire fac' to
repeal the second Patent. Secondly, when the King granteth any thing that is
grantable upon a false suggestion, the King by his prerogative Jure Regio may
have a Scire fac' to repeal his own grant. Thirdly, when the King doth grant
any thing, which by Law he cannot grant, he Jure Regio (for advancement of
Justice and right) may have a Scire fac' to repeal his own Letters Patents.
Now the Judgment in all these three cases is, Quod prædictæ literæ Patentis
dicti domini Regis revocentur, cancellentur, evacuentur, adnullentur, & vacuæ, &
invalidæ pro nullo penitus habeantur, & teneantur; ac etiam quod irrotulamentum
eorundem cancelletur, cassetur, & adnihiletur, &c. Hereof our Lord Chancellor
of England (for forrain Chancellors, it may be, have not like Authority) is
called Cancellarius, à cancellendo, i. à digniori parte, being the highest point of
his jurisdiction to cancel the Kings Letters Patents under the Great Seal, and
damning the inrollment thereof, by drawing strikes through it like a Lettice.

And all this which hath been said concerning the office of the Lord Chan-
celloz, or Lord Keeper, is included within his Oath, which followeth in these
words, and consisteth upon six parts. He shall swear,

1. That well and truly he shall serve our Sovereign Lord the King and his
people in the office of Chancellor (or Lord Keeper.)

2. That he shall do right to all manner of people, poor and rich, after the
Laws and usages of the Realm.

3. That he shall truly counsel the King, and his counsel he shall layne
and keep.

4. That he shall not know nor suffer the hurt or disheriting of the King, or
that the rights of the Crown be decreased by any means, as far as he may
let it.

5. And if he may not let it, he shall make it clearly and expressly to be known
to the King, with his true advice and counsel.

6. And that he shall do and purchase the Kings profit in all that he reason-
ably may. As God him help, and by the Contents of this Book.

Articles against Cardinal Woolsey.

Now for as much as the Articles exhibited to King H.8. 1 die Decembris Anno 21 of his Reign, by the Lords and others of his Privy Council (whereof ^{Vid. Artic. 20, 21, 26, 38, 41, 42, 44, 46.} Sir Thomas More Lord Chancellor was one) and by two of the principal Judges of the Realm against Cardinal Woolsey, do in divers of the Articles concern the jurisdiction of the Chancery, (viz. the 20 and 26 Articles, &c.) and other titles of this fourth part of the Institutes, we have thought good justly and truly to transcribe from the very Original, under the proper hands of the Lords and others of the Privy Council, and of the said Judges (which we have seen and had in our custody) and have compared this Transcript with the Original it self, and have (because they are of great weight and use to many purposes) transcribed it de verbo in verbum without omission of any thing, as matters of that nature ought to be: and the rather, for that in our Chronicles they are very untruly rehearsed: and before this time (that we find) the true Articles were never printed.

Constrained by necessity of our fidelity and conscience, complain and shew to your most Royal Majesty, we your Graces humble, true, faithful, and obedient subjects: that the Lord Cardinal of York, lately your Graces Chancellor, presuming to take upon him the authority of the Popes Legat *De latere*, hath by divers and many sundry ways and fashions committed high and notable grievous offences, misusing, altering, and subverting the order of your Graces Laws: and otherwise contrary to your High Honour, Prerogative, Crown, Estate, and Dignity regal, to the inestimable great hinderance, diminution, and decay of the universal wealth of this your Graces Realm. And it is touched summarily and particularly in certain Articles here following, which be but a few in comparison of all his enormities, excesses, and transgressions committed against your Graces Laws.

That is to say;

1. First, Where your Grace and Noble Progenitors within this your Realm of England, being Kings of England, have been so free, that they have had in all the world none other Sovereign, but immediate subject to Almighty God in all things touching the regality of your Crown of England, and the same preeminence, prerogative, jurisdiction, lawful and peaceable possession your Grace and your noble Progenitors have had, used, and enjoyed, without interruption or business therefore by the space of 200 years and more: whereby your Grace may prescribe against the Popes Holiness, that he should not, nor ought to send or make any Legat, to execute any authority Legatine contrary to your Graces prerogative within this your Realm. Now the Lord Cardinal of York being your subject and natural liege born, hath of his high, orgallous, and insatiable mind, for his own singular advancement and profit, in derogation, and to the great imblemishment and hurt of your said regal jurisdiction and prerogative, and the long continuance of the possession of the same, hath obtained authority Legatine: by reason whereof he hath not only hurt your said prescription, but also by the said authority Legatine, hath spoiled and taken away from many houses of Religion within this your Realm much substance of their goods. And also hath usurped upon all your Ordinaries within this your Realm much part of their jurisdiction, in derogation of your prerogative, and to the great hurt of your said Ordinaries, Prelates, and Religious.

The sovereignty, prerogative regal jurisdiction, and freedom of the Crown of England

Prescribe.

Cardinal of York.

Authority Legatine.

Spoiled many houses of religion. Usurped upon Ordinaries.

2. Also the said Lord Cardinal being your Ambassador in France, made a treaty with the French King for the Pope, your Majesty not knowing any part thereof, nor named in the same; and binding the said French King to abide his order and award if any controversie or doubt should arise upon the same, betwixt the said Pope and the French King.

Ambassador.

3. Also the said Lord Cardinal being your Ambassador in France, sent a Commission to Sir Gregory de Cassalis under your Great Seal in your Graces name, to conclude a treaty of Amity with the Duke of Ferrare, without any command.

Ambassador.

commandment of Warrant of your Highness, nor your said Highness advertised of made privy to the same.

The King and I.

4. Also the said Lord Cardinal, of his presumptuous mind, in divers and many of his Letters and instructions sent out of this Realm to outward parts, had joyned himself with your Grace, as in saying and writing, The King and I would ye should do thus. The King and I do give unto you our hearty thanks: Whereby it is apparent that he used himself more like a fellow to your Highness, then like a subject.

Oath.

5. Also, where it hath ever been accustomed within this Realm, that when Noble Men do swear their household servants, the first part of their oath hath been, that they should be true liege men to the King and his Heirs Kings of England: The same Lord Cardinal caused his servants to be only sworn to him, as if there had been no Sovereign above him.

Great Pocks.

6. And also whereas your Grace is our Sovereign Lord and Head, in whom standeth all the surety and wealth of this Realm; the same Lord Cardinal knowing himself to have the foul and contagious disease of the Great Pocks broken out upon him in divers places of his body, came daily to your Grace, rowning in your ear, and blowing upon your most noble Grace with his perilous and infective breath, to the marvellous danger of your Highness, if God of his infinite goodness had not better provided for your Highness. And when he was once healed of them, he made your grace to believe, that his disease was an Impostume in his head and of none other thing.

Provision.
Premunire.

7. Also the said Lord Cardinal by his authority Legatine, hath given by presentation the Benefices of divers persons, as well Spiritual as Temporal, contrary to your Crown and Dignity, and your Laws and Statutes theretofore provided: by reason whereof he is in danger to your Grace of forfeiture of his lands and goods, and his body at your pleasure.

Counsellor.
Forein Ambassadors.

8. Also the said Lord Cardinal taking upon him otherwise then a true Counsellor ought to do, hath used to have all Ambassadors to come first to him alone, and so hearing their charges and intents, it is to be thought he hath instructed them after his pleasure and purpose before that they came to your presence, contrary to your High commandment by your Graces mouth to him given: and also to other persons sent to him by your Grace.

Letters sent from
beyond Sea.
First to him.

9. Also the said Lord Cardinal hath practised so, that all manner of Letters sent from beyond the Sea to your Highness have comen first to his hands, contrary to your high commandment by your own mouth, and also by others sent to him by your Grace: by reason whereof, your Highness nor any of your Council had knowledge of moe matters but of such as it pleased him to shew them, whereby your Highness and your Council have been compelled of very force to follow his devices, which oftentimes were set forth by him under such crafty and covert meanings, that your Highness and your Council have oftentimes been abused: insomuch that when your Council have found and put divers doubts and things which afterward have ensued, he to abuse them used these words, [I will lay my head that no such thing shall happen.]

Forein intelligence to him, &c.

10. Also the said Lord Cardinal hath practised, that no manner of person having charge to make espial of things done beyond the Sea, should at their return come first to your Grace, nor to any other of your Council, but only to himself: and in case they did the contrary, he punished them for their so doing.

Licenses to transport grain and victual.

11. Also the said Lord Cardinal hath granted licenses under your Great Seal, for carrying out of Grain and other Victuals after the restraint hath been made thereof, for his own lucre and singular advantage of him and his servants for to send thither as he bare secret favour, without your Graces Warrant or knowledge thereof.

Ambassadors resident with other Princes.

12. Also the said Lord Cardinal used many years together not only to write unto all your Ambassadors resident with other Princes in his own name, all advertisements concerning your Graces affairs being in their charge, and in the same his Letters wrote many things of his own mind without your Graces pleasure

pleasure known, concealing divers things which had been necessary for them to know; but also caused them to write their advertisements unto him. And of the same Letters he used to conceal for the compassing of his purpose many things both from all your other Counsellors, and from your self also.

13. Also where good hospitality hath been used to be kept in houses and places of religion of this Realm, and many poor people thereby relieved, the said hospitality and relief is now decayed and not used: and it is commonly reported that the occasion thereof is, because the said Lord Cardinal hath taken such impositions of the Rulers of the said houses, as well for his favour in making of Abbots and Priors, as for his visitation by his authority Legatine. And yet nevertheless taketh yearly of such Religious houses, such yearly and continual charges, as they be not able to keep hospitality as they were used to do: which is a great cause that there be so many Vagabonds, Beggars and Thieves.

Hospitality in
houses of Reli-
on decayed.
Impositions.

Yearly charges.

14. Also where the same Lord Cardinal said before the suppression of such houses as he hath suppressed, that the possessions of them should be set to ferme among your lay subjects after such reasonable yearly rent as they should well thereupon live, and keep good hospitality: and now the demesne possession of the same houses since the suppression of them had been surveyed, mete, and measured by the Acre, and he now set above the value of the old rent. And also such as were fermors by Covent seal, and copyholders be put out and amoved of their fermes, or else compelled to pay new fine contrary to all equity and conscience.

Suppression of
houses.

Reasonable rents.

Above the value:

New fine.

15. Also the said Lord Cardinal sitting among the Lords and other of your most honorable Privy Council, used himself, that if any man would shew his mind, according to his duty, contrary to the opinion of the said Cardinal, he would so take him up with his accustomed words, that they were better to hold their peace then to speak, so that he would hear no man speak but one or two great personages, so that he would have all the words himself, and consumed much time with a fair tale.

Abused the Privy
Council.

All the words
himself.

16. Also the said Lord Cardinal by his ambition and pride hath hindered and undone many of your poor subjects for want of dispatchment of matters, for he would no man should meddle but himself, insomuch that it hath been affirmed by many wise men, that ten of the most wisest and most expert men in England were not sufficient in convenient time to order the matters that he would retain to himself. And many times he deferred the ending of matters, because that suiters should attend and wait upon him, whereof he had no small pleasure, that his house might be replenished with suiters.

Ambition and
pride.

Want of dispatch.
No man to med-
dle but himself.

Suters to attend.

17. Also the said Lord Cardinal by his authority Legatine hath used, if any spiritual man having any riches or substance, deceased, he hath taken their goods as his own, by reason whereof their wills be not performed: And one mean he had to put them in fear, that were made Executors, to refuse to meddle.

Taken the goods
of Spiritual men
deceased.

18. Also the said Lord Cardinal constrained all Ordinaries in England yearly to compound with him, or else he will usurpe half or the whole of their jurisdiction by prevention, not for good order of the Diocesses, but to extort treasure: for there is never a poor Archdeacon in England, but that he paid yearly to him a portion of his living.

All Ordinaries,
&c. to compound
with him.

19. Also the said Lord Cardinal hath not only by his untrue suggestion to the Pope shamefully slandered many good religious houses, and good virtuous men dwelling in them, but also suppressed by reason thereof above thirty houses of Religion. And where by authority of his Bull he should not suppress any house, that had mo men of Religion in number above the number of 6 or 7, he hath suppressed divers houses that had above the number. And thereupon hath caused divers offices to be found by verdict untrue, that the Religious persons so suppressed had voluntarily forsaken their said houses, which was untrue, and so hath caused open perjury to be committed, to the high displeasure of Almighty God.

Slandered religi-
ous houses to the
Pope.

By authority of
his Bull suppressed
30 houses of
Religion.

Caused divers
Officers to be
found untrue.
Perjury.

20. Also the said Lord Cardinal hath examined divers and many matters in the Chancery after judgment thereof given at the Common Law, in subversion

Examined matters
in Chancery after
judgments.

of

- of your Laws, and made some persons restore again to the other party condemned that, that they had in execution by vertue of the Judgment at the Common Law.
- Injunctions.** 21. Also the said Lord Cardinal hath granted many Injunctions by Writ, & the parties never called thereunto, nor Will put in against them: and by reason thereof, divers of your subjects have been put from their lawful possession of their lands and tenements. And by such means he hath brought the more party of the suiters of this your Realm before himself, whereby he and divers of his servants have gotten much riches, and your subjects suffered great wrongs.
- His servants rich.** 22. Also the said Lord Cardinal to augment his great riches hath caused divers pardons granted by the Pope to be suspended, which could not be revived, till that the said Lord Cardinal were rewarded, and also have a yearly pension of the said pardon.
- The Popes pardons.**
- Oppression.** 23. Also the said Lord Cardinal not regarding your Laws nor Justice, of his extort power hath put out divers and many fermors of his lands, and also Pastentees of the Archbishoprick of York and the Bishoprick of Winchester, and of the Abbey of St. Albons, which had good and sufficient grant thereof by your Laws.
- Elections of Abbots, Priors, &c.** 24. Also the same Lord Cardinal, at many times when any houses of Religion have been void, he hath sent his Officers thither, and with crafty persuasions hath enduced them to compromit their election in him: And that before he named or confirmed any of them, he and his servants received so much great goods of them, that in manner it hath been to the undoing of the house.
- Visited.** 25. Also by his authority Legatine, the same Lord Cardinal hath visited the most part of the religious Houses and Colledges of this your Realm, and hath taken from them the twenty fifth part of their livelihood, to the great extortion of your subjects and derogation of your Laws and prerogative, and no Law to bear him so to do.
- Extortion.**
- Injunctions.** 26. Also when matters have been near at judgment by Proces at your Common Law, the same Lord Cardinal hath not only given and sent Injunctions to the parties, but also sent for your Judges, and expressly by threats commanding them to defer the judgment, to the evident subversion of your Laws, if the Judges would so have ceased.
- Threatened Judges**
27. Also whereas neither the Bishop of York nor Winchester, nor the Abbey of St. Albons, nor the profit of his Legation, nor the benefit of the Chancery, nor his great pension out of France, nor his Wards, and other inordinate taking could not suffice him, he hath made his son Winter to spend Seven and twenty hundred pounds by the year, which he taketh to his own use, and giveth him not past Two hundred pounds yearly to live upon.
- Pension out of France.**
- His son Winter.**
28. Also where the said Lord Cardinal did first sue unto your Grace to have your assent to be Legat de latere, he promised and solemnly protested before your Majesty, and before the Lords both Spiritual and Temporal, that he would nothing do nor attempt by the vertue of his Legacy, that should be contrary to your gracious prerogative or regality, or to the damage or prejudice of the Jurisdiction of any Ordinary, and that by his Legacy no man should be hurt nor offended: And upon that condition, and no other, he was admitted by your Grace to be Legate within this your Realm: which condition he hath broken, as is well known to all your Subjects. And when that he made this promise, he was busie in his suit at Rome to visit all the Clergy of England both exempt and not exempt.
- Legat De latere.**
- His promise.**
- Nothing against prerogative or regality.**
- Or to the prejudice of ordinary jurisdiction.**
- Breach of promise**
- Untrue surmise to the Pope of the Clergy.** 29. Also upon the suit of the said Lord Cardinal at Rome to have his authority Legatine, he made untrue surmise to the Popes Holiness against the Clergy of your Realm: which was, that the regular persons of the said Clergy had given themselves in reprobum sensum; which words St. Paul writing to the Romans applied to abominable sin: which slander to your Church of England shall for ever remain in the Register at Rome, against the Clergy of this your Realm.

30. Also the said Lord Cardinal had the more part of the goods of Doctor Smith late Bishop of Lincoln, Bishop Savage of York, Master Dalbye Archdeacon of Richmond, Master Tonysers, Doctor Rothall late Bishop of Durham, and of Doctor Foxe late Bishop of Winchester, contrary to their wills, and your Laws and Justice. Oppression and Extortion.
31. Also at the Oier and Terminer at York, Proclamation was made that every man should put in their Bills for extortion of Ordinaries, and when divers bills were put in against the Officers of the said Lord Cardinal of extortion, for taking twelve pence of the pound for probacion of Testaments, whereof divers bills were found befoze Justice Fitzherbert and other Commissioners, the said Lord Cardinal removed the said Indictments into the Chancery by Certiorari, and rebuked the said Fitzherbert for the same cause. Extortion of Ordinaries. Indictments of extortion of Ord. removed into the Chancery.
32. Also the said Lord Cardinal hath busied and endeavoured himself by crafty and untrue tales to make dissention and debate amongst your Nobles of your Realm, which is ready to be proved. Made debate between the Nobles of the Realm.
33. Also the said Lord Cardinals Officers have divers times compelled your subjects to serve him with Carts for Carriage, and also his servants have taken both Corn and Cattel, Fish, and all other Victual, at your Graces price, or under, as though it had been for your Grace, which is contrary to your Laws. Purveyance for him. Purveyance at the Kings price. Vid. inf. 35, 36.
34. Also the said Lord Cardinal hath misused himself in your most honourable Court, in keeping of as great estate there in your absence, as your Grace would have done if you had been there present in your own person. Keeping great estate in Court.
35. Also his servants by virtue of your Commission under your Broad Seal by him to them given, have taken cattel and all other victual at as low a price as your Purveyors have done for your Grace by your Prerogative, against the Laws of your Realm. Purveyance. Prerogative in Purveyance.
36. Also where it hath been accustomed that your Purveyors for your honourable household, have had yearly out of your Town and liberty of S. Albons thre or four hundred quarters of wheat, truth it is, that since the Lord Cardinal had the room of the Abbot, that your said Purveyors could not be suffered by him and his officers to take any wheat within the said Town or liberty. Purveyance.
37. Also he hath divers times given injunctions to your servants that have been for causes befoze him in the Star-chamber, that they, nor other for them should make, labour by any manner of way, directly or indirectly, to your Grace to obtain your Graces favour or pardon; which was a presumptuous intent for any subject. Injunction not to sue for pardon for causes in the Star-chamber. A great presumption.
38. Also the said Lord Cardinal did call befoze him Sir John Stanly Knight, which had taken a Farm by Covent Seal of the Abbot and Covent of Chester, and afterwards by his power and might contrary to right committed the said Sir John Stanly to the prison of Fleet by the space of a year unto such time as he compelled the said Sir John to release his Covent Seal to one Leghe of Adlington, which married one Larks daughter, which woman the said Lord Cardinal kept, and had with her two children. Whereupon the said Sir John Stanly upon displeasure taken in his heart made himself Monk in Westminster, and there died. Oppression. Leghe of Adlington The Cardinal kept Larks daughter, and had by her two children.
39. Also on a time your Grace being at S. Albons according to the ancient custom used within your Werge, your Clerk of the Market doing his office, did present unto your Officers of your most honourable household the prizes of all manner of Victuals within the precinct of the Werge. And it was commanded by your said Officers to set up the said prizes both on the gates of your honourable household, and also within the market place within the town of S. Albons, as of ancient custom hath been used. And the Lord Cardinal hearing the same, presumptuously, not like a subject, caused the aforesaid prizes which were sealed with your Graces Seal, accustomedly used for the same, to be taken off and pulled down in the said market place, where they were set up: and in the same places set up his own prizes sealed with his seal, and Clerk of the Market. Prices of Victuals. Pulled down the price, &c.

would if it had not been letted in semblable manner, used your seal standing upon your gates. And also would of his presumptuous mind have openly set in the stocks within your said town your Clerk of your market. By which presumption and usurpation your Grace may perceive that in his heart he hath reputed himself to be equal with your real Majesty.

The Cardinals hat
in the Kings coin
of groats, &c.

40. Also the said Lord Cardinal of his further pompous and presumptuous mind hath enterprised to joyn and imprint the Cardinals hat under your arms in your coin of groats made at your City of York, which like deed hath not been seen to be done by any subject within your Realm before this time.

Subpcena.

41. Also where one Sir Edward Jones Clerk, Parson of Orewly in the County of Buck' in the eighteenth year of your most noble reign left his said Parsonage with all tithes and other profits of the same to one William Johnson by Indenture for certain years, within which years, the Dean of the said Cardinals Colledge in Oxenford pretended title to a certain portion of tithes within the said Parsonage, supposing the said portion to belong to the Parsonage of Chichelly, which was appointed to the Priory of Tykeford lately suppressed, where (of truth) the Parsons of Orewly have been peaceably possessed of the said portion out of the time of mind. Whereupon a Subpcena was directed to the said Johnson to appear afoze the Lord Cardinal at Hampton-Court, out of any term, with an Injunction to suffer the said Dean to occupy the said portion. Whereupon the said Johnson appeared before the said Lord Cardinal at Hampton Court, where without any bill, the said Lord Cardinal committed him to the Fleet, where he remained by the space of twelve weeks, because he would not depart with the said portion, And at the last upon a recognisance made that he should appear before the said Lord Cardinal whensoever he was commanded, he was delivered out of the Fleet; howbeit as yet the said portion is so kept from him that he dare not deal with it.

Injunction.

42. Also where one Martin Decowra had a lease of the Mannor of Balsall in the County of Warwick for term of certain years, an Injunction came to him out of the Chancery by Writ upon pain of a thousand pounds, that he should avoid the possession of the same Mannor, and suffer Sir George Throckmorton Knight to take the profits of the same Mannor, to the time the matter depending in the Chancery between the Lord of S. Johns and the said Decowra were discussed. And yet the said Decowra never made answer in the Chancery, ne ever was called into the Chancery for that matter, and now of late he hath received a like Injunction upon pain of two thousand pounds contrary to the course of the Common Law.

Heresies and erro-
neous sects.

43. Also whereas in the Parliament Chamber, and in open Parliament communication and debates were had and moved, wherein mention was an incident made of matters touching heresies, and erroneous Sects; It was spoken and reported by one Bishop there being present, and confirmed by a good number of the same Bishops, in presence of all the Lords Spiritual and Temporal then assembled, that two of the said Bishops were minded and desired to repair unto the University of Cambridge for examination, reformation and correction of such errors as then seemed and were reported to reign amongst the Students and Scholars of the same, as well touching the Lutheran sect and opinions, as otherwise. The Lord Cardinal informed of the good minds and intents of the said two Bishops in that behalf, expressly inhibited and commanded them in no wise so to do. By means whereof, the same errors, as they affirmed, crept moze abroad and took greater place; saying furthermoze that it was not in their defaults, that the said heresies were not punished, but in the said Lord Cardinal, and that it was no reason any blame or lack should be attributed to them for his offence: whereby it evidently appeareth that the said Lord Cardinal besides all other his hainous offences, hath been the impeacher and disturber of due and direct correction of heresies, being highly to the danger and peril of the whole body, and good Christian people of this your Realm.

44. Finally, forasmuch as by the aforesaid Articles is evidently declared to

to your most Royal Majesty, That the Lord Cardinal by his outrageous pride hath greatly shadowed a long season your Graces honour, which is most highly to be regarded, and by his insatiable avarice and ravenous appetite to have riches and treasure without measure, hath so grievously oppressed your poor subjects with so manifold crafts of bribery and extortion, that the Common-wealth of this your Graces Realm is thereby greatly decayed and impoverished. And also by his cruelty, iniquity, affection and partiality, hath subverted the due course and order of your Graces Laws, to the undoing of a great number of your loving people.

Please it your most Royal Majesty therefore of your excellent goodness towards the Weal of this your Realm, and Subjects of the same, to set such order and direction upon the said Lord Cardinal, as may be to the terrible example of other to beware so to offend your Grace, and your Laws hereafter. And that he be so provided for, that he never have any power, Jurisdiction or Authority hereafter to trouble, vex, and impoverish the Common-wealth of this your Realm, as he hath done heretofore, to the great hurt and damage of every man almost high and low, which for your Grace so doing, will daily pray, as their duty is, to Almighty God for the prosperous estate of your most Royal Majesty, long to endure in honour and good health, to the pleasure of God, and your hearts most desire. Subscribed the first day of December the 21 year of the reign of our Sovereign Lord King Henry the 8.

T. More. T. Norfolk. Charl. Suff. Tho. Dorset. H. Exon. John Oxinford. H. Northumberland. G. Shrewsbury. R. Fitzwater. T. Rocheford. T. Darcy. W. Mountjoy. William Sandys.

William Fitzwilliam. Henry Guldeford. * John FitzJames. * Anthony FitzHerbert.

So these Articles began to be subscribed by Sir Thomas More Lord Chancellor, and endeth with the two Judges of the Law.

There be in this Court many Officers, Ministers, and Clerks of the Court, the principal whereof is the *a* Master of the Rolls, anciently called Garden des Rolles, Clericus Rotulorum, Custos Rotulorum. And this is an ancient office, and grantable either for life, or at will, at the pleasure of the King. *b* The house annexed to his office, is called domus Converterorum, so called because * King H. 3. founded this house to be a house of Jews as should be converted to the true religion of Jesus Christ, and there should have maintenance and allowance, which continueth to this day. King E. 3. anno 15. of his reign, by Letters Patents annexed this house to the office of Custos rotulorum, and this office is grantable by Letters Patents: for the more assurance whereof, and of divers things worthy of observation, we have thought good to set down an Act of Parliament concerning this matter in these words.

c King E. 3. by his Charter anno 51. of his reign did grant after the death of William Burstall then Keeper of the Rolls and of the same house of Converts of the Kings grant to the Keeper of the Rolls for the time being, and annexed it to the said office imperpetuum, and further granted that after the decease of the said William, the Chancellor or Keeper of the Great Seal after the voidance of the said office of keeping of the Rolls to institute successively the Keepers of the Rolls, in dicta domo Converterorum, & custodes illos ponend' in possessione ejusdem, &c. This Chapter was confirmed by Act of Parliament, as by that which followeth appeareth.

d A nostre tres doute H. le roy & son honorable conseil en cest Parlement supplie son petit Clerke William de Burstall Gardiner des rolles de la Chancellerie, & Gardiner de la Meason des Convertes de Londres quele est de vostre honorable Patronage que come le dit William a ses tres grandes custages & reparille la Chappelle de les edifices du dit meason, & nostre Segnior le roy dareien (que dieu assoil) pur maintenance de la dit Chappelle & meason a la prier du dit William granta pur luy & ses heires per

* Chief Justice of England.

* Sir Anth. Fitzh. a Justice of the Court of Common Pleas.

a He was not called Master of the Rolls, until 11 H. 7. ca. 20. but never so called in any Letters Patents of this office. *b* Fortescue ca. 24. * See the Charter of erection by King H. 3. Hollings. 1281 Vid. Rot. Parl. 18 E. 1. nu.

There were above fourscore Converts in 18 E. 1. and petitioned in Parliament for more relief.

c Rot. Pat. 11 Ap. 51 E. 3. which you may read at large in Hollingh. pa. 1281, 1282.

d Ex bundello petic. Parl. anno 1 R. 2.

Garden des rolles de la Chancery & de la meason des Convertes de Londres.

Nora, the Master of the Rolls or Keeper is Gardin of the house of Converts of the Patronage or gift of the King.

ses Letters Patents que le dit Meason de Converse apres le decease du dit William demerera a tous jours as Gardein de dits Rolles pur le temps esteants tanque come ils seront en le dit office sans certain form comprise en Letters sursdites, Please a nostre dit-Seignior le Roy & Seigniors den Parliament confirmer la dit grant & les Letters Patents issint ent faitz, & les choses comprises en ycel en ouier de charitie. Whereunto full assent was given by Authority of Parliament.

Rot.Pat. 6 R.2.

After which Act of Parliament John de Waltham Gardein or Keeper of the Rolls obtained of R.2. in the sixth year of his reign Letters Patents, whereby the King granted to him & successoribus suis Custodibus Rotulorum the said house of Converts; and the reason hereof seemeth to be, for that in the said Charter of 51 E.3. Sibi & successoribus suis wanted. This John of Waltham was in 12 R.2. Bishop of Salisbury, and after Treasurer of England. Whereby it appeareth what estate the Master of the Rolls hath in domo Conversorum. And this house is the place where the Rolls of the Chancery are kept, and are so called because they are written in Parchment, and made up in bundles of Rolls, that is to say, of Charters, Letters Patents, Commissions, Deds intolled, Recognisances, &c.

These Records since the beginning of H.7. remain in the Rolls, and all before were transmitted into the Tower, and there remain.

Also for further manifestation hereof, we have thought good to set down Letters Patents of this office in the 25 year of H. 6. and rather for that it was granted Authoritate Parliamenti, in these words. Henricus Dei gratia Rex Angliæ & Franciæ, & Dominus Hiberniæ, omnibus ad quos presentes lre pervenerint. Sciatis quod cum nos tertio decimo die Novembris, anno regni nostri decimo septimo constituimus dilectum clericum nostrum Johannem Stopenderi Custodem rotulorum & librorum Cancellariæ nostræ cum omnibus ad officium illud spectantibus, percipiend' in eodem officio feodo, commoditates, & proficua consueta, quamdiu nobis placuerit. Et ulterius dederimus, & concesserimus eidem Johanni custodiam domus nostræ Conversorum præfato officio pro inhabitatione dicti Custodis per progenitores nostros quondam reges Angliæ ab antiquo depositæ, & annexæ: Habendum & tenendum custodiam illam cum omnibus juribus & pertinentiis spectantibus ad eandem, prout in lris nostris patentibus inde confectis plenius continetur. Nos bonum & gratuitum servitium quod dilectus clericus noster Thomas Kirkby nobis ante hæc tempora multipliciter impendit, indiesque impendere non desistit merite contemplantes, ac de fidelitate, circumspeditione & industria ipsius Thomæ plenius confidentes, constituimus ipsum Thomam Custodem rotulorum & librorum Cancellariæ nostræ cum omnibus ad officium illud spectantibus, percipiendo in eodem officio feoda, commoditates, & proficua consueta à tempore quo officium illud per Cessionem seu alio modo quocunque proximo vacare contigerit, quamdiu nobis placuerit. Et ulterius dedimus & concessimus, ac per presentes damus & concedimus eidem Thomæ, custodiam dictæ domus nostræ Conversorum præfato officio pro inhabitatione ejusdem custodis per dictos progenitores nostros ab antiquo (ut præmittitur) dispositæ & annexæ. Habend' & tenend' eidem Thomæ custodiam illam cum omnibus juribus & pertinentiis spectantibus ad eandem quamdiu ipsum Thomam dictum officium Custodis rotulorum & librorum prædictorum habere & tenere sive occupare contigerit. Eo quod expressa mentio de vero valore annuo officii prædicti & cæterorum præmissorum seu alicujus eorum, aut de aliis donis seu concessionibus per nos præfato Thomæ ante hæc tempora factis in præsentibus facta non existit, aut aliquibus Actibus sive Ordinationibus in contrarium editis sive ordinatis, aut aliqua alia causa, re, seu materia in aliquo non obstantibus, In cujus rei testimonium has literas nostras fieri fecimus patentes. Teste me ipso apud Maidston vicesimo nono die Martii, Anno regni nostri vicesimo quinto Authoritate Parliamenti.

Clericus noster
Custos rotulorum
& librorum Can-
cellariæ nostræ cum
omnibus ad offi-
cium illud spect.
Custodia domus
nostræ Conver-
sorum.

Custos Rotulorum,
&c.

Of latter times in the grant of this office he is stiled Clericus * parvæ bagæ, * Belonging anc-
Custos rotulorum, & domus Conversorum. ently to his office.

The Master of the Rolls hath in jure officii, the gift of the offices of Six See the Statute of
Clerks in the Chancery. 14 H.8. cap.8.

In the absence of the Lord Chancellor he heareth causes and giveth orders.

See in the third part of the Institutes, cap. Premunire.

CAP. IX.

The Court of Requests.

HAVING spoken of the Court of Chancery, swayed and governed by the Lord Chancellor, or Keeper of the Great Seal: It shall be fit in this place to treat of the Jurisdiction of the Court of Requests, wherein the Lord Privy Seal at his pleasure, and the Masters of Requests do assemble and sit. And the original institution hereof was, that such petitions as were exhibited to the King, and delivered to the Masters of the Requests, should be perused by them, and the party directed by them to take his remedy according to their case, either at the Common Law or in the Court of Chancery. And thereupon they were called Magistri à libellis supplicum: and in this respect this meeting and consultation was called the Court of Requests, as the Court of Audience and Faculties are called Courts, albeit they hold no plea of controverſie.

See hereafter the Courts of Audience and Faculties, pa.

Those which in former times would have this Court to be a Court of judicature took their aim from a Court in France, which is called Curia eorum quos Requestrarum, i. supplicationum palatii magistrorum vocant, apud quos causa eorum tantum agitur, qui Regis obsequiis deputati, vel privilegio donati sunt: hujus Curie Judices octo sunt. But others taking this jurisdiction to be too narrow, contend to have it extend to all causes in equity equal with the Chancery, and their decrees to be absolute and uncontrollable. But neither of these are warranted by Law, as shall evidently appear.

Callaneus 7 part. fol. 136. b.

In the Reign of H. 8. the Masters of Requests thought (as they intended) to strengthen their jurisdiction by Commission, to hear and determine causes in equity. But those Commissions being not warranted by Law (for no Court of Equity can be raised by Commission) soon vanished for that it had neither Act of Parliament, nor prescription time out of mind of man to establish it.

See before cap. Chancery. Perots case, pag. 87. See the Articles against Cardinal Woolsey, pag. 89.

* Mich. 40 & 41 Eliz. In the Court of Common Pleas, upon a Bill exhibited in the Court of Requests against Flood, for default of answer an Attachment was awarded against Flood under the Privy Seal, to Stepney then Sheriff of Carnarvan, who by force of the said Writ attached Flood, and would not let him go, until he had entered into an Obligation to the Sheriff to appear before his Majesties Council in the Court of Requests: upon which Obligation the Sheriff brought an Action of debt for default of appearance, and all this matter appeared in pleading. And it was adjudged upon solemn argument, that this which was called a Court of Requests, or the White Hall, was no Court that had power of judicature, but all the proceedings thereupon were Coram non Judice, and the arrest of Flood was false imprisonment, so as he might avoid the bond by Dures at the Common Law, without aid of the Statute of 23 H. 6. cap. 10.

See Halls Chronicle ubi supra, and Guines learned preface to his Reading in the Inner Temple, about 16 El.

* Tr. 40 El. in Comuni banco inter Stepney & Lloyd. Rot. 1157. See Halls Chron. 8 H.8. fol. 59. agreeeth with the Law.

The punishment of Perjury in the Court of Whitehall by the Statutes of 33 H.8. cap.9. and 5 Eliz. cap.9. doth not give it any jurisdiction of judicature, no more then the Statutes that give against a Gaoler an action for an escape, or punisheth

punisheth a Gaoler of his own wrong for extortion, an officer of his own wrong shall be punished by the Statutes in that case provided, and yet the Statutes thereby make them no lawful officers: for it is one thing to punish and another to give authority. So it was justice in the Parliaments to punish perjury in the Whitehall, although the Court were holden by usurpation, and so before it appeareth to be by the judgment in Stepneys case. See Beverlyes case lib. 4. 123, 124. and the case of the Dyphans of London, Lib. 5. fol. 73. where it is called the Court of Requests, taking the same to be according to the Original institution. And as gold or silver may as currant money pass even with the proper Artificer, though it hath too much alloy, until he hath tried it with the Touchstone: even so this nominative Court may pass with the Learned as justifiable in respect of the outside by vulgar allowance, until he advisedly looketh into the roots of it, and try it by the rule of Law; as (to say the truth) I my self did: But errores ad sua principia referre, est refellere, To bring errors to their first, is to see their last.

Error, qui non
fistitur, approba-
tur.

Regula.

The Authoꝝ of the booke of diversity of Courts written in 21 H. 8. doth not so much as mention any such Court: nor the Doctor and Student who wrote in 23 H. 8. treating of matters of equity never mentioneth any such Court: nor in any of the Reports of H. 8. or of any other before him, we find any mention made of any such Court. Herein, as in all other things, we have dealt clearly and plainly, upon what authorities and reasons we have grounded our opinion: and when we undertook to write, we resolved to publish nothing reluctant con-
scientia, which we (by Gods special grace) have performed, without any spark of contradiction, or respect of any private whatsoever: That Charge ever sound-
ing in mine ear, that is given to all that take upon them to write, Ne quid falsum audeant, ne quid verum non audeant. And although the Law be such as we have set down; yet in respect of the continuance that it hath had by permis-
sion, and of the number of decrees therein had, it were worthy of the wisdom of a Parliament, both for the establishment of things for the time past, and for some certain provision with reasonable limitations (if so it shall be thought convenient to that High Court) for the time to come: Et sic liberavi animam meam.

CAP. X.

The Court of Common Pleas.

By the Statute of Magna Carta ca. 11. it is provided, Quod communia placita non sequantur Curiam nostram, sed teneantur loco certo. Habet Rex etiam Curiam, & Justiciarios in banco residentes, qui cognoscunt de omnibus placitis, de quibus auctoritatem habent cognoscendi, & sine warranto jurisdictionem non habent nec coercionem. *Et paulo post.* Sunt etiam alii Justiciarii * perpetui, certo loco residentes, sicut in Banco, loquelas omnes de quibus habent warrantum terminantes, qui omnes jurisdictionem habere incipiunt præstito sacramento.

Mag. Cart. cap. 11.
Bracton lib. 3.
fol. 105. b.

* Ut sup. fol. 108. a

Oultre ceo voilons q̄ Justices demorgent continualment a Westm. ou ailors la, ou nous voudrons ordeiner, a pleader communes pleas solong; ceo que nous les manderons per nous breifs; istint que des parols deduces devant eux per nous briefes eyent record.

Britton fol. 2.
Vide Fleta lib. 2.
cap. 2. & Lib. 1.
cap. 54.

Out of these, thre things are to be observed: First what shall be said communia placita. They are not called communia placita in respect of the persons, but in respect of the quality of the Pleas. Regularly Pleas are divided into Pleas of the Crown, and into Common or Civil Pleas. Pleas of the Crown are Treason and Felony, and Disposition of treason and felony, &c. This Court is the lock and the key of the Common Law in Common Pleas, for herein are real actions, whereupon fines and recoveries (the Common assurances of the Realm) do pass, and all other real actions by Original Writs are to be determined, and also of all Common pleas mixt or personal: in divers of which, as it appeareth before in the Chapter of the Kings Bench, this Court and the Kings Bench have a concurrent authority.

See the 2. part of the Institutes Mag. Cart. cap. 11.
Vid. 17 E. 3. 50.
Quare incumbat and in the Chapter of the Kings Bench here before
* Vide sup. p. 79.

* Robert Parning the Kings Serjeant at Law 24 July 14 E. 3. was created Chief Justice of England, in which Office he remained until the 15 of December following, and then he was made Lord Treasurer of England; In which office he continued until the 15 year of E. 3. when he was made Lord Chancellor of England: and while he was Lord Chancellor, he would come and sit in this Court being the lock and key of the Common Law, as is aforesaid: and there debate matters in Law of greatest difficulty, as it appeareth in the report of the year of 17 E. 3. f. 11. 14. 23. 37, &c. knowing assuredly, that he that knows not the Common Law, can never rightly judge of matters in equity: whereof at that time very few matters were depending before him in Chancery.

2. These words of Bracton, [sine warranto jurisdictionem non habent,] are well expounded by Britton, that that Warrant is by the Kings Writs, Solong; ceo que nous les manderons per nous briefes. So as regularly this Court cannot hold any common plea in any action, real, personal, or mixt, but by Writ out of the Chancery, and retornable into this Court.

3. That in certain cases this Court may hold plea by Bill without any Writ in the Chancery, as for or against any officer, Minister, or privileged person of this Court.

Also this Court without any Writ may upon a suggestion grant prohibitions to keep, as well Temporal as Ecclesiastical Courts, within their bounds and jurisdiction, without any original or plea depending: for the Common Law which in those cases is a prohibition of it self stands in stead of an Original, whereof there be infinite presidents in this Court. And Sir Thomas Egerton

8 R. 2. Attachment sur prohib. pl. ultimo.
9 H. 6. 61.
10 E. 2. action sur lestat. 24.

Lord

Lord Chancelor Mich. 7 Jac. Regis called Fleming Chief Justice and all the Judges of the Kings Bench, and Tanfeild Chief Baron, and the rest of the Barons of the Exchequer, of whom the Chancelor demanded whether the Court of Common Pleas had authority to grant any prohibition without Writ of Attachment or plea depending: who upon mature deliberation unanimously resolved, that this Court might grant prohibitions upon suggestions without any Writ of Attachment or plea depending, for the reason aforesaid, and according to a multitude of precedents. The Justices of the Common Pleas were not called, because they had often resolved the point before. So as now this point concerning the jurisdiction of this Court for granting of prohibitions upon suggestions, where there is neither Writ of attachment, nor plea depending, is in peace, being resolved by the Justices of the Bench and of the Common Pleas, and by the Barons of the Exchequer.

See the 2. part of the institutes all these points.

4. This Court upon an adjournment upon a foreign voucher may hold plea likewise upon other foreign pleas, and upon general bastardy. Ne unques accouple in loial matrimony &c. for none but the Kings Courts, and no inferior Court shall write to the Bishop. So likewise upon ancient demesne pleaded, &c.

* So called the Common Bench in respect of the Common pleas there holden.

The Chief Justice of the Common Pleas is created by Letters Patents. Rex, &c. Sciatis quod constituimus dilectum & fidelem E. C. militem, capitalem Justiciarium * de Communi banco. Habendum quamdiu nobis placuerit, cum vadiis & feodis ab antiquo debitis & consuetis. In cuius rei testimonium has literas nostras fieri fecimus patentes. Teste, &c.

And each of the Justices of this Court hath Letters Patents. Sciatis quod constituimus dilectum & fidelem P. W. militem unum Justiciariorum nostrorum de Communi banco, &c. But none can be constituted Judge of this Court unless he be Serjeant at Law of the degree of the Coif, and yet in the Letters Patents to them made, they are not named Serjeants.

The Jurisdiction of this Court is general, and extendeth throughout all England.

See the 2. part of the Institutes, Mag. Cart. cap. 11. 6 E. 3. 52. 39 E. 3. 24. 18 E. 3. Stat. 3.

For the antiquity of this Court see before in the Chapter of the Kings Bench adjoining thereunto, 6 E. 3. where a fine was levied in this Court 6 R. 1. and in 39 E. 3. a plea in this Court in 1 H. 3. And that I may speak once for all, the Justices of the Kings Bench, or of this Court of the Common Bench, that they observe the ancient rule of Law, Nemo duobus utatur officiis, for none of them can take any other office, or any fee, or reward but of the King only. And it were behoofeful to the Commonwealth and advancement of Justice and right, and preferment of well deserving men, if the like course were holden concerning all offices, as well Ecclesiastical as Temporal and Civil: and that no man following the example of the reverend Judges should enjoy two offices. For several offices were never instituted to be used by one man.

Term. Trin. An. 19 E. 1. in communi banco, Rot. 146. Rotel. in Theaur.

The Jurisdiction of this Court for punishment of their Officers & Ministers. Petr. de Luffenham *indictatus* quod ipse in Curia hic a die Sancti Hillarii in 15 dies An. Regni Regis nunc 19, falso & maliciose delevit adjournationem ejusdem essoin' ad diem illum intrati de com' Rotel. pro Rob' Attehalde de South-Luffenham petente & Radul' de Kirkeby ten' de placito terra, &c. Et quesitus qualiter se velit inde acquietare, dicit quod in nullo est inde culpabilis, & de hoc ponit se super juram' de sociis in Cur' hic. Et qui jurati dicunt super Sacramentum suum, quod predictus Radulphus predictis die & anno fuit in Cur' hic, & dixit predicto Petro quod predictum essoinum fuit adjornat', & predictus Petrus intravit infra Bancum & rotulos de essoin', & cum perpendisset quod le aff. fuit appositum molivit ipse pollicem suum & inde sotavit super le aff. quousq; illud fere omnino delevit ut sic faceret predictum Robert' amisisse breve suum, &c. Ideo considerat' est quod predict' Petrus committitur Gaole de Fleete custodiend' per unum annum & unum diem pro falsitate & deceptione predictis, & tunc redimendus

pro

pro voluntate domini regis, &c. Et sciend' quod liberatus fuit Gaole die Mercurii prox' ante festum sancte Margarete virginis hoc anno, &c. Postea die Veneris prox' ante festum Sancte Margarete virginis Anno 20 deliberatus est predictus Petrus, & inhibitum est ei, quod nihil habet nisi vestes pendentes in dorso, admittitur ad dimid' Marc. per 20 li. Wil. de Okeham, Ita tamen quod si ad plus sufficiat, &c. Justic' reservant eis potestatem, &c.

Et quia predictus Johannes de Upton in Cur' hic recognovit quod hoc anno in estate concessit quod predictam defaltam remitteret, & pro illa concessione recepit 20 s. in Autumpno, & postea ad predictam tertiam septimanam Sancti Michaelis idem Johannes remisit predictam defaltam, per quam predictus Willielmus recuperasse potuit predictum ten' in fraudem & deceptionem predicti Willielmi; Ideo ipse pro falsitate predicta committitur Gaole de Fleet commoraturus per annum & diem, &c. per formam* statuti, &c. Postea post annum & diem, &c. predictus Johannes venit & deliberatus est secundum statutum, &c. et inhibitum est ei, &c. et finivit pro una marca.

Mich. 19 E. 1. in Banco Rot. 191. Northampton.

W. 1. cap. 29.

Bene examinatur fraus de Breui in Jur' per Vic' retorn' Termin' Trin' & per quendam alium panellum ejusdem mutatum & contrefactum, unde contrefactor per Jur' est culpabilis, & adjudicatur Gaole de Fleete per annum & diem. Et quia scriptor ejusdem brevis licet de falsitate & malitia non fuit particeps, nec aliquid mali fecisse putavit, &c. Custodiatur, &c. & finem fecit per unam marcam.

Eodem Rot. nu. 210. London.

Et quia Rogerus de Langeport Attornatus est male fame, & defatigavit Cur': Ideo committitur Gaole, &c. Et quesitis rotulis de Indictamentis Attornatorum, &c. compertum est quod idem Rogerus indictatus fuit, quod ipse fuit conversus in cancell' & socius Ada de Ponte fracto, quia falsavit sigillum Domini Regis, & falsa brevica composuit, &c. Et quesitus qualiter se velit acquietare, dicit quod Clericus est, & non potest in Curia hic Domino Regi inde respondere. Et quia nullus ordinarius ipsum petit, &c. nec ipse Rogerus aliter se velit inde acquietare, Ideo ipse committitur Gaole quousque, &c. Et mittitur ad Turrim London, &c.

Hil. 20 E. 1. in Banco Rot. 109. Northampton.

The Officers of this Court are many, viz. Custos Brevium, tres Prothonotarii, three Prothonotaries: Clericus Warrantorum, Clerk of the Warrants: Clericus Argenti Regis, Clerk of the Kings Silver: quatuor Exigendarii, Exigencers: quatuordecim Falazarii, Filazers: Clericus Juratorum, Clerk of the Juries: Clericus Essniorum, Clerk of the Essoignes: Clericus Utlagiariorum, Clerk of the Outlawries: this belongs to the Office of the Attorney General, who exerciseth it by Deputy.

In former times great abuses have been by Attornies of this Court, by suing out a judicial Process without any Original; which when it hath been found out, it hath been severely punished; for many inconveniencies thereupon do follow. For example, in 20 H. 6. an Attorney of the Common Pleas had made a Capias directed to the Sheriff of Yorke, whereof there was no Original; at which day of the return an Attachment was awarded by the Court against the Attorney to answer the deceit, whereupon he was taken and examined, and confessed it, and thereupon by the Court he was committed to the Fleet, imprisoned for a month, and that his name should be drawn out of the Roll of Attornies, and never should be Attorney either in this Court or any other, and thereunto he was sworn. Note the severity of this Judgment doth shew the hainousness of the offence.

20 H. 6. 37. 2. W. 1. cap. 29.

17 E. 3. 51, 52.
 Nota. he may be
 punished for the
 crime, and the
 party grieved
 may have his
 action.
 Pasch. 20 E. 1. in
 Banco Rot. post
 135.

An Attorney sued out an Habere facias seisinam against one, by force whereof the true tenant was put out of his fræhold, where in truth there was no Record of any recovery: the party grieved brought an action of deceit against the Attorney, and recovered damages, and the Attorney imprisoned.

Memorandum quod Magister Johannes Lovell qui fuit Custos Rotulorum & Brevium Domini Regis de Banco per manus suas proprias liberavit Johanni Bacon Clerico de mandato Domini Regis in hæc verba. Edwardus, &c. Dilecto Clerico suo Johanni Lovell Salutem. Cum Commiserimus dilecto Clerico nostro Johanni Bacon custod' Rotulorum & Brevium nostrorum de Banco; Habendum quamdiu nobis placuerit: Vobis mandamus quod eidem Johanni Rotulos & Brevia prædicta que sunt in custodia vestra ex commissione nostra per Chirographum inde inter vos & ipsum consiciend' sine dilatione liberetis custod' in forma prædicta. T. me ipso apud Stebenheth 17 Aprilis Anno Regni nostri 20.

Super quo prædictus Johannes liberavit dicto Johanni Bacon Rotulos & Brevia de Terminis Sancti Michaelis Anno 17, usque hunc Terminum, & similiter Rotulos de Esson'. Et scripta dedita & suspecta cum talleis dedita, una cum compotis dedita. Ac etiam 160. not' finium, duas ligulas de recordis sine die, & 14 Certificat' Episcoporum.

CAP. XI.

The Court of Exchequer.

THE Authority of this Court is of original jurisdiction without any Commission. Of this Court Britton speaking in the Kings person saith. *a* Vols nous que a nous Eschekeurs a Westm³ & aillors eyent nous *b* Treasurers, & nous *c* Barons illonques Jurisdiction & record de choses que touchent leur office a oier & determiner tous les causes que touchent nous debts, & auxi a nous fees, & les incident choses, sans les queux tiels choses ne purront estre tries, & que ilz eyent power a conufter de detts que lon doit a nous dettors per ou nous puissions plus tost approcher a nostre dett.

d En droit des purprestures voilons nous que le noifances soient oustes aux costages des purprestours, & les sufferables soient prise in nostre maine a la value per an soit inrolle, & selonque le discretion des Treasurers & des Barons de nous Eschequers soient arenees a fee farma a eux que pluys voient doner.

e Et soit auxi enquis de nos customes de quirs & de leynes que les ount coilles, & combien les coillours ount bien suffert de passer de sakes de leyne sauns payer custome, & combien eit valu la custome chescun au en chescun mannere de custome a nous appartenant & ceux articles soient terminees a nostre Eschequer selonc la discretion de nos Barons.

See the Customers of Normandy, cap. 5. & 6. touching the Exchequer there, both of another Jurisdiction, and of other Judges, and Officers, then our Court of Exchequer is.

Lescheker est un place quarre que solement est ordeine pur le prou le Roy ou deux Chivaliers. 2. Clerks, ou 2 homes, lres sont assignes pur Oier & Terminer les torts faits al Roy & a la corone en droit de ces hies & ces franchises, & les accounts des Bailiffs, & des receivors de deniers les Roy & des administrators de ces biens per la vieve de une Sovereign quest *Treasurer de Anglitterre*. Les dieux Chivaliers foloient estre appeles deux Barons pur afferer les amerciements de Counties, & des Barons & des tenants Counties & Baronies cy que nul nefuit affere forsque per ces Piers.

A celle place estoit assigne un Seale ove garden pur fair ent acquittance de chescun payment que avoir le voloit, & de sealer les bres & les estrets south cere verte issant de celle place pur le prou le Roy. En celle place sont auxi Chamberleins & plusors auters ministres que ne touch my molt a la Ley.

Ordeine fuit Lescheker in manner come ensuist, & les paines pecuniels de Counties & Barons en certain, & auxi de tenants, Counties & * Baronies dismemlies & que ceux amerciement fuissent affered per les Barons del Eschequer, & que lein envoiait les estretres de leur amerciements al Exchequer ou que ilz fuissent amercies en la Court le Roy.

f Ouster ceo nul Common plea ne soit deformes tenus en Lescheker encounter la form de la grand Charter.

g Fleta (for Bracton treateth not of this Court) saith. Habet & Rex Curiam suam & Justiciarios suos residentes ad Scaccarium. And this is all I find in him.

This Court is divided into two parts, viz. judicial Accounts called Scaccarium computorum, and into the receipt of the Exchequer. *b* Una origo utriusque Scaccarii, superioris scilicet, & inferioris, sed quicquid in superiori computatur, in inferiori solvitur.

Before we observe any thing out of these ancient Authoys and Acts of Parliament, it shall be necessary to set down the great Officers, the Judges, and other Officers and Ministers of this Court, as they be at this day.

a Britton fol. 2. b.
b Nota, Treasurers in the plural number.

c Of ancient time they were Barons and Peers of the Realm, lib. nigro. Scaccar' parte 1. cap. 4.

See the 14 chap. of Mag. Cart. and the exposition of the same.

d Et fol. 29. b.

e Et fol. 38. b.

Mirror ca. 1. §. 14.
De la pace del Eschequer.

Et cap. 1. §. 3.

* This was in respect of the tenure, for all Earldoms and Baronies were holden in Capite.

23 E. 3. Ass. 120.

26 Ass. 37.

f Artic. sup. Cart.

cap. 4. 28 E. 1.

Stat. de Roteland.

10 E. 1. Reg. 187.

g Fleta li. 2. cap. 2.

b Ocham.

Fiscus in one sense is taken for the Exchequer, properly it is Sporta a Hammer, wherein the confiscations, settlements, and other monies of the King were carried into the Treasury.

¶ The officers of
this Court
Rot. Par. 13 R.2.
nu. 6 & 7.

Vide Rot. Pat.
13 E. 3. part. 1.
for this office.
* Matth. Paris
18 H. 3. p. 391. &
19 H. 3. ann. Dom.
1274.
And so was Tho.
Wimondham.
An. Dom. 1258.
50 H. 3.

1. Dominus Thesaurarius Angliæ: which office he hath at this day by the delivery of a white staffe, at the Kings will and pleasure. In former times he had this great office by delivery of the keys (golden keys) of the treasury: when treasure failed, the white staffe served to rest him upon it, or to drive away importunate suiters.

2. Thesaurarius Scaccarii, anciently called Arcarius ab arca, and this office he hath by Letters Patents. For both these offices he hath 365 l. fæs, robes out of the Wardrobe 15 l. 7 s. 8 d. In toto 380 l. 7 s. 8 d. * Hugo Pateshul was first Treasurer of the Exchequer, and after Summus Thesaurarius.

Cancellarius Scaccarii, that keepeth the Seal. See Pl. Com. 321. Leschequer ad Chancellor & Scale, & les Bâres usuall in le Chancery in Leschequer, &c. sont plus ancient que le Register. See of the Chancellor of the Exchequer hereafter in the Court of the Exchequer Chamber.

Capitalis Baro & Barones alii.

* Subthesaurarius Scaccarii, anciently called Locum tenens Thesaurarii. Petrus de Willebyc locum tenens Thesaurarii, Anno 30 E. 1. & plures alii: He nameth the two praizers of all the goods seised or not customed, and ordereth whether the party shall have them at the price or not, he appointed the Steward, Cook and Butler for the provision of the Star-chamber: he in the vacancy of the Treasurer doth all things in the Receipt, that the Treasurer doth. In the Statute of 39 El. c. 7. and 43 El. in the Subsidy of the Clergy he is called Under-treasurer of England. Concerning this matter I find of record this Writ following.

Rot. Brevium.
20 E. 2.
a Archbishop
Treasurer of the
Exchequer.
b Nota in dicto
Scaccario.
c Under-treasurer.
d Treasureship of
the Exchequer
granted by Let-
ters Patents.

Custos Regni.

Edwardus Rex Angliæ & Dominus Hiberniæ Baronibus & Camerariis suis de Scaccario suo, Salutem. Quum pro eo quod a venerabilis pater W. Archiepiscopus Eborum nuper Thesaurarius Scaccarii prædicti, circa diversa negotia in partibus borealibus est occupatus, quo minus intendere possit ad ea quæ ad officium illud in dicto Scaccario pertinent exercendo, constituerimus venerabilem patrem Johannem Wintoniensem Episcopum c tenentem locum Thesaurarii Scaccarii prædicti, quousque de officio illo aliter duximus ordinandum, percipiendo in eodem officio (dum illud sic tenuerit) feodum consuetum, d prout in literis nostris patentibus præfato Episcopo inde confectis plenius continetur. Vobis mandamus quod ipsum Episcopum ad officium admittatis & ei in his quæ ad officium prædictum pertineant intendatis in forma prædicta. Teste Edwardo filio nostro primogenito Custode Regni nostri, apud Hereford Sexto die Novembris, Anno Regni nostri vicefimo.

Vid. The Lord
Chancellors oath
in the Chapter
of the Chancery.

The office and duty of the Lord Treasurer of England doth appear by his oath, which standeth upon eight Articles.

1. That well and truly he shall serve the King and his people in the office of Treasurer.

2. That he shall do right to all manner of people, poor and rich, of such things as concern his office.

3. The Kings treasure he shall truly keep and dispend.

4. He shall truly counsel the King.

5. The Kings Council he shall * layn and keep.

6. That he shall neither know nor suffer the Kings hurt, nor his disheriting nor that the rights of the Crown be decreased by any mean, as far forth as he, may let it.

7. And if he may not let it, he shall make knowledge thereof clearly and expressly to the King with his true device and counsel.

8. And he shall do and purchase the Kings profit in all that he may reasonably do: which in effect agreeth with the oath of the Lord Chancellor, as you may read ubi supra.

* Lain is an old
French word, to
hide.

Imprimis

Imprimis post sigillationem patentium de illo officio vocetur in cur Cancellariæ, coram Domino Cancellario genibus flexis facit sacramentum, ut superius scribitur, & deinde sigillatum erit breve Regis directum Baronibus & Camerariis de Scaccario de attendenc' recitans effectum dictarum literarum patentium. Et inde recesserit dictus Dominus Cancellarius ad Curiam Scaccarii & ibidem (dicto Thefaurario stante) ad barram legantur literæ Patentes prædictæ & similiter prædictum bre, & vocatus est idem Thefaurarius ad locum suum per dictum Dominum Cancellarium accipiens cessum, & liberatæ erunt tunc & ibidem claves officii Thefaurarii, & omnes officarii sub se recedent cum ipso Thefaurario in Thefaurum & dantes ei attendenc'. *This we have transcribed de verbo in verbum in eisdem verbis.*

Forma constitutionis Thefaurarii Angliæ.

The Lord Treasurer of England hath also granted to him by Letters Patents under the Great Seal, Thefaurariam Scaccarii Regis Angliæ, which of ancient time was a distinct office by it self. The office of the Treasurer of the Exchequer did principally take care of the græn war, tæss and tenures, as it is said; he hath also with the Barons the custody of records, as by the insuing record appears.

Vid. Rot. Castrum, anno 17 H. 3.

In an Information of intrusion in the Exchequer against Brace, judgment was given for the Queen against Brace, who brought a writ of Error directed to the Lord Chancellor and Lord Treasurer, and they made a warrant under their seals to the Barons to bring the record before them. And Manwood Chief Baron objected against both the writ and the warrant, for that the Statute of 31 E. 3. c. 12. that giveth this writ of Error is general, that the Lord Chancellor and Lord Treasurer shall cause to come before them the record and process of the Exchequer, and in as much as no special writ was given by the Statute, therefore the writ ought to be directed to them that have the keeping of the record according to the course of the Common Law.* And for that the Treasurer of the Exchequer and Barons have the keeping of the Records of the Exchequer, the writ of Error ought to have been directed to them, and that the Lord Chancellor and Lord Treasurer of England are Judges in this case, and not the Treasurer of the Exchequer. And upon serch of precedents all the writs of Error from the making of the Statute until 7 El. were directed to the Treasurer of the Exchequer, and Barons to bring the Record before the Lord Chancellor and Lord Treasurer: but in 7 El. and since divers writs have been directed as this writ was, &c. But it was resolved by the Lord Chancellor, Lord Treasurer, and the two Chief Justices Assistants, that the writ ought to be directed to the Treasurer of the Exchequer and Barons that have the Record in their custody according to the ancient course and precedents, and thereupon this writ abated.

Hil. 25 Pl. Coram Baronibus.

Note the Statute speaketh of the Chancellor and Treasurer generally which is intended of the Treasurer of England, in digniori sensu.

See lib. 1. fol. 11. Sir William Pelhams case.

* Note hereby it clearly appeareth that the Treasurer and Barons of the Exchequer are keepers of the records judicial of the Exchequer.

Vide 9 E. 3.

Here four things are to be observed. 1. That albeit the Barons, as hath been said, are the sole Judges, yet the Treasurer of the Exchequer is joyned with them in keeping of the Records, whereof the Barons are Judges, for they are parcel of the Kings Treasure. 2. That writs of Error are to be directed to them that have the custody of the Record wherein any judgment is given; as a writ of Error to reverse a judgment in the Court of Common Pleas, shall be directed to the Chief Justice only who hath the custody of the body of the Record wherein the judgment is given, but the original writ and warrant of Atturney are not in his custody. 3. That albeit the Lord Treasurer is also Treasurer of the Exchequer, yet the writ of Error is directed to him as Treasurer of the Exchequer, and the Barons, to have the Record before himself as Treasurer of England and the Chancellor. 4. That at the making of the Statute of 31 E. 3. that giveth the writ of Error, the offices of Treasurer of England and the Treasurer of the Exchequer were in several hands, as by the writs of Error brought soon after appeareth. Before the said Statute of 31 E. 3. the Errors in the Exchequer were sometimes examined in Parliament, and sometimes before Commissioners by force of the Kings writ under the Great Seal.

Pat. 18 E. 3. n. 46. &c. Vid. 1 R. 2.

nu. Sir William de la Pools case. Mich 33 & 34 E. 1. Coram Rogero de Hegham & aliis Justiciariis, &c.

It was petitioned in Parliament in 22 E. 3. nu. 25. that erroneous judgments

in

in the Exchequer might be reversed in the Kings Bench; but it succeeded not.

Vide Term. Pasch. 14 E. 3. a Writ directed to the Treasurer and Barons calling to them such Justices as they should think fit, to examine the Record, &c. of the judgment in the Exchequer, &c. for the Countess of Kent against the Abbot of Ramsey, upon which judgment the Abbot brought his Writ of Error. Fitzherbert for another purpose abridgeth the case, Tit. Scire fac. 122.

Hil. 11 E. 3. in libro rubeo in Scaccario fol. 322. the case of John de Lecestre Chamberlain of the Exchequer, a notable precedent to the like effect, Lege, quia optime.

Nota in the Act of 31 E. 3. that is called the Council Chamber, which now is called the Exchequer Chamber: because there was the assembly of all the Judges being the Kings Council for deciding of matters in Law.

1 part of the Institutes, cap. Grand Serjeanty, Sect. 153.

¶ The Chamberlains of the Exchequer. For these officers see in the first part of the Inst. lib. 2. cap. Grand Serjeanty. Sect. 153. the office mentioned in the Letters Patents is, Officium unius Camerarii de Recept Scaccarii, five officium unius Camerarii de Scaccario, and is granted for term of life to be exercised by him or his Deputy. To this Office belongs the office of one of the Receivers of the Receipt.

¶ Contrarotulator. Of so great regard is the right use of the Pipe, as there is a Controller thereof, which no other Office in this Court hath. And the Chancellor of the Exchequer is the Controller of the Pipe.

¶ Rememoratores 3. viz. Regis, Thesaurarii, & Primorum fructuum.

¶ Clericus Pipe. Of this Officer somewhat is necessary to be said. The original institution of this Court was taken from a Conduit or conveyance of water into a Cistern: for as water is conveyed from many Fountains and Springs by a Pipe into a Cistern of a house, and from thence into the several offices of the same: so this golden and silver stream is drawn from several Courts as fountains of justice, and other Springs of revenue reduced and collected into one Pipe, and by that conveyed into the Cistern of his Majesties Receipt, &c. Therefore all accounts and debts to the King are delivered and collected out of the offices of the Kings Remembrancer, and Treasurers Remembrancer, &c. and drawn down and put in charge in the Pipe. So as whatsoever is in charge in this Roll or Pipe, is said in Law to be duly in charge. The Clerk of the Pipe in the Patent of his office, is called Ingrossator magni Rot. in Scaccario.

See the Stat. of 5 R. 2. c. 14. Stat. 1. 26 Aff. p. 60.

Duly in charge.

The Annual or great Roll.

Duly in charge. The Roll of revenues.

5 Auditors. 1 H. 7. 4. a. 7 El Dier 238. b. Sir Rich. Lees case.

Quamdiu se bene gesserit.

Also the Treasurers Remembrancer is by his office to charge and enter from the Original into the Annual, otherwise called the Great Roll, all farm rents and other rents whatsoever upon leases of lands within the survey of this Court: and whatsoever is in charge in this Roll is said to be duly in charge. Also he ought to keep another Roll, commonly called a Roll of reversions, as of grants of lands and offices in tail, for life or years absolute compoto, aut aliquid inde reddendo, to the end, as often as need shall require, Writs may be granted to enquire whether the issue be spent, the lessee dead, &c.

¶ There be five Auditors of the Kings revenues within the survey of this Court, and their office is to take the accounts of the Kings Receivers, Sheriffs, Escheators, Collectors, and Customers, and to audit and perfect them. But an Auditor cannot allow any license or grant, for the Auditor knoweth not whether the license or grant be good or no: but upon petition it ought to be allowed by the Barons who know the Law, & sic de similibus. Neither can the Auditor put any thing in charge, for his office is (as hath been said) but to take and audit accounts: for the words of the Patent be, Concessimus B. officium unius Auditorum Scaccarii nostri quod J. S. nuper habuit & occupavit: Habendum & tenendum prædictum officium præfato B. quamdiu se bene gesserit in eodem per se vel sufficient deput suum. Nay, though the Barons do order upon sight of any Record or evidence, that any thing shall be put in charge, this is used to be done to bring it in question, but it is not in Law accounted to be duly in charge (until it be recovered, received, and accounted for of Record: for it is not judicially done,

done, because it may be done in the absence of the party. Neither can any Auditor make a Super, but of that that hath been received and accounted for before.

¶ Auditor of the Prests, take and audite the accounts of Ireland, Barwick, the Mint, and of any money impressed to any man.

¶ Auditor of the Receipts. First, He is a kind of Filazer, for he fileth the Tellers Bills and entreteth them. Secondly, He is a Remembrancer, for he giveth to the Lord Treasurer a Certificate of the money received the week before. Thirdly, He is an Auditor, for he maketh Debentures to every Teller before they pay any money, and taketh and auditeth their Accounts. Besides all these he keepeth the Black book of receipts, and the Lord Treasurers key of the Treasury, and hath every Tellers money locked up in the new Treasury.

¶ Forinsec' Oppositor, the Forzein Opposer, he doth oppose all Sheriffs and Green wax. Bailiffs of Liberties of their Green wax: under these words [Green wax] are included Fines, Amerciaments, Recognizances for the peace, Recognizances for appearance in any other Court, and good behaviour, and such like incertainties certified in several Stræts into the office of the Lord Treasurers Remembrancer, who delivereth the same to the Clerk of the Exchequer to be put into Proses. And because the Exchequer annexed to the writ are under a Seal in green wax, they are vulgarly called Greenwax. But Felons goods, Waifs, Strays, Outlaws goods, Deodands, and such like, are within the Sheriffs accounts, with which the Escheator was wont to deal. 42 E. 3. cap. 9.
7 H. 4. cap. 3.

¶ Clericus Extractorum, Clerk of the Exchequer, his office is partly touched before.

Here it may be demanded what the meaning of these words (of Exchequer that 4 H. 5. cap. 2. sowne not) is. The Act of 4 H. 5. cap. 2. being original in French, is in proprio idiomate, *Des Excheats nient sovvenn*, which by turning the two single v v into a w was first made sownenn, and afterwards sowne. Now sovvenn properly signifieth to be remembered, and such casualties as are not to be remembered run not in demand, that is, are not leviable.

¶ Clericus Nihilorum maketh a Roll of all such sums as the Sheriff upon Proses for the Greenwax return Nihil, and delivereth that Roll into the office of the Lord Treasurers Remembrancer to have execution done of it for the King. See the Statute of 5 R. 2. cap. 13. Stat. 1. concerning these returns of Nihil and the discharge thereof.

¶ Clericus Placitorum, Clerk of the Pleas. In this mans office all the officers and privileged persons in this Court are to sue and be sued. Of this matter more hereafter.

¶ Marechallus, Marshal. To this officer the Court committeth the keeping of the Kings debtors during the sitting of the Term, to the end they may provide to pay the Kings debts, or else to be further imprisoned. Such Offices as are found Virtute officii, and brought into the Exchequer, are delivered to him, to be delivered over to the Lord Treasurers Remembrancer. He also appointeth Auditors to Sheriffs, Escheators, Customs, and Collectors for taking their accounts. Stat. 51 H. 3.
statut. 5.

¶ Clericus Summonitionum, Clerk of the Summons.

¶ Deputati Camerarii duo, called Under-chamberlains of the Exchequer: they cleave the Tallies written by the Clerk of the Tallies, and read the same, that the Clerk of the Pell and the Controllers thereof may see their entries be true: they also search for all Records in the Treasury.

¶ Secundarii Rememoratoris Regis duo.

¶ Secundarii Rememoratoris Thesaurarii duo.

¶ Secundarii Pipæ duo.

In the other part of Exchequer which is called the Receipt. Concerning the course of the Receipt of the Exchequer, see Rot. Claus. 39 E. 3. m. 26.

¶ The two Chamberlains. Of the duty of these officers see in the first part of the Institutes. Vide 51 H. 3. Stat. 5. 14 E. 3. cap. 14.

¶ Clericus Talliarum. There be two kind of Tails or Tallies, the one is called

Rot. claus. 39 E. 3.
memb. 26.
First part of the
Instit. Sect. 193.

^a 1 R. 2. cap. 3.
^b 27 H. 8. cap. 11.
 31 H. 8. cap. 16.
 2 E. 6. cap. 4.

called a Tally of *a* debt, and the other is called a Tally of *b* reward; of both which you may read in divers Acts of Parliament.

C Clericus Pellis, Clerk of the Pele. His duty is to enter every Tellers bill into a Roll, called Pellis receptorum. His duty also is to enter in another Roll payments called Pellis exitus; and by what warrant the payment was made.

C Numeratores, 4 Tellers. The office of a Teller consisteth in four duties. 1. To receive monies due to the King. 2. To give to the Clerk Pellis receptorum a bill thereof, whereby he may be charged. 3. To pay to all persons monies by Warrant of the Auditor of the Receipt. 4. They make yearly and weekly books of their receipts and payments, which they deliver to the Lord Treasurer.

C Junctores talliorum duo.

C Deputati Camerarii duo.

C Custos Thesauriæ.

C Tabellarii Ordinarii 4.

C Scribæ duo.

C Officiarii Decimarum & Primitiarum.

Parl. 5 R. 2. cap. 16.
 Stat. 1.

By the Statute of 5 R. 2. for making a Commission in the Exchequer, the Clerk shall not take for his fee above 2 s. only; nor for a Record of Nisi prius with the Writ but 2 s. only, as afore this time was wont to be done and used.

Vld. in the Office
 of the Kings Remem-
 brancer.
 Mich. 26 H. 6.
 Rot. 46.

See in the end of a book containing many little Books, as Fitzherberts Justice of Peace, Carta Feod., &c. the fees of the Offices of the Exchequer.

But it shall be necessary to set down the duties of the Kings Remembrancer, and of the Lord Treasurers Remembrancer.

The duty of the
 Kings Remem-
 brancer.

The office of the Kings Remembrancer consisteth principally in eight duties. His first is to write Proses against Collectors of Customs, Subsidies, and Fifteens. 2. He entrench in his Office all Recognizances before the Barons, and taketh bonds for any of the Kings debts, for observing of orders, or for appearances, and his duty is to make out Proses upon every of them. 3. He maketh Proses upon Informations upon penal Statutes, all which Informations are entered in his office. 4. He maketh Wills of composition upon informations upon penal Statutes. 5. He taketh the Statment of debts and entrench them. 6. The Clerk of the Star-chamber certifieth into his office the fines set in the Star-chamber; this officer maketh a Record thereof, and draweth them down into the Pipe. 7. Into this office ought to be delivered to be safely kept, all Assurances, Conveyances, and Evidences, whereby any Lands, Tenements, Hereditaments, or other things are granted to the King. 8. Also there is a Court of Equity holden in the Exchequer Chamber by English Bill: all the Wills and proceedings thereupon are entered in the office of this officer. See the Statute of 5 R. 2. cap. 14. Stat. 1.

The duties of the
 Lord Treasurers
 Remembrancer.

The office of the Lord Treasurers Remembrancer principally consisteth in eight duties. 1. His duty is to preserve the broad-spreading and fruitful tree of Tenures so many ways beneficial to the Crown, and the jurisdiction of the Court of Wards, which sometime were within the survey of this Court, but since taken from it. He maketh out Proses for the Kings revenue by reason of the tenures of the King (Wards excepted). 2. He maketh Proses of Fieri fac' and Extent for debts due to the King either in the Pipe, or with the Auditors. If a Clerk of this Court make any Writ of Proses for a debt which hath been paid and the Tallies thereof sojned and allowed, he shall lose his office, and be imprisoned until he hath satisfied the party so much as by the discretion of the Treasurer and Barons he is endamaged. 3. He maketh Proses against all Sheriffs, Escheators, Receivers, and Bailiffs, to bring them to account. 4. To make an Entry of Record, whereby it appeareth whether Sheriffs and other Accountants pay their proffers due at Easter and Michaelmas. 5. He maketh another Entry of Record, to the end it may be known whether Sheriffs and other Accountants keep their days of prescripion. 6. The Green-war is certified into his office, and are by him delivered to the Clerk of the Exchequer, as hath

See hereafter in
 the Chapter of the
 Court of Wards.
 1 R. 2. cap. 5.

hath been said. 7. There ought to be brought into this Office all the accounts of Customers, Controulers, and all other accounts, to make thereof in this Office an entry of Record, to avoid all delay and concealment in the Kings business. 8. See the Statute of 5 R.2. cap. 14 Stat. 1.

Concerning these Officers there is an excellent Law made in 5 R.2. whereby it is enacted, [That from henceforth no Baron of the Exchequer, Clerk of the Pipe, Remembrancer, Opposer, Controuler, Clerk of the Pleas, and Clerk of the Forrein Summons, Auditor, or other chief Officer of the Exchequer be made, unless he be well learned in the Law, or otherwise very skilful in the courtes and usages of the Exchequer.] Here is the heart-string of this Court, for albeit the Laws and Orders thereof be most excellent, yet the benefit thereof consists in good and skilful Officers and Ministers.

Rot. Parl. 5 R.2. nu. 105. and worthy to be printed.

These things being understood, let us now peruse our ancient Authors, for out of the old fields must come the new Corn.

Eient nous Treasurers. Hereby it appeareth being in the Plural number, that there be two Treasurers, whereof we have spoken before. There is also a Treasurer of the Kings Chamber, Thesaurarius Camera Regis, which is not accountable in the Exchequer, but to the King himself. If the King appoint some whom he trusts to take his account, this is esteemed to be done by the King himself, Qui per alium facit, per ipsum facere videtur.

Rot. Parl. 3 H.6. nu. 47.

Et nous Barons illonques jurisdiction. * All judicial proceedings according to Law in the Exchequer, are coram Baronibus, and not coram Thesaurario & Baronibus: But the Court of Equity holden in the Exchequer Chamber is holden before the Lord Treasurer, Chancellor and Barons. Of this Court we have given a touch before, and shall treat more hereafter. Note the judicial proceedings before the Barons are in Rolls, but they are not numbred as in other Courts.

28 H.6. 11, 12. 5 R.2 ca. 9. Stat. 1. 20 E.3. cap. 1. The Court of Equity in the Exchequer Chamber. See hereafter, cap. 13. pag. 118. Rolls not numbred.

The Oath of the Barons of the Exchequer expressing their duties consisteth upon ten Articles. 1. That well and truly he shall serve in the Office of Baron of the Kings Exchequer. 2. That truly he shall charge and discharge all manner of people, as well poor as rich. 3. That for highness nor for riches, nor for habited, nor estate of no manner of person or persons, nor for any deed, gift, nor promise of any person the which is made to him, nor by craft, nor by ingen he shall let the Kings right. 4. Nor none other persons right he shall disturb, let or respite contrary to the Laws of the Land. 5. Nor the Kings debts he shall put in respite, where that they may goodly be levied. 6. That the Kings need he shall speed before all others. 7. That neither for gift, wages, nor good dæd, he shall * layne, disturb, nor let the profit or reasonable advantage of the King in the advantage of any other person, nor of himself. 8. That nothing he shall take of any person for to do wrong or right, to delay or to deliver, or to delay the people that have to do before him; but as hastily as he may them goodly to deliver without hurt of the King, and having no regard to any profit that might thereof to him be therein, he shall make to be delivered. 9. Where he may know any wrong or prejudice to be done to the King, he shall put and do all his power and diligence that to redress; and if he may not do it, that he tell it to the King; or to them of his counsel, which may make relation to the King, if he may not come to him. 10. The Kings Council he shall keep and layne in all things.

The Oath of the Barons. See the Statute of 20 E.3. cap. 2.

* Layne, i. to conceal or hide.

In the Exchequer at the suit of the King in an Information of intrusion of Lands, wherein issue is joyned, which may be tried by the Country; yet where the King hath a direct Record or Records for the manifestation of his title, the Kings Attorney may pray that the trial may be by Records, whereof you may read a notable case, Mich. 27 & 28 Eliz. in the Exchequer where the case was, That in an Information of Intrusion into certain Lands, &c. against Savil, the issue was whether certain Lands belonged to a house or no; and upon a trial by Record Judgment was given against Savil. Afterwards Savil the defendant died, and his son and heir brought a Writ of Error in the Exchequer Chamber, where it was holden, that this kind of trial by Records was before the Statute of

Trial by Record.

Mich. 27 & 28 El. In Scaccar. inter le Roigne & Savil.

33 H.6. 10. 51, 52.

For trial by Records, vid. Mich. 32 & 33 E.1. coram Rege. Robertus Archiep. Cant. &c. Hil. 8 E.2. coram Rege, Cornwall. Walterius Epif. Exon. &c.

33 H.8. cap.39. the words whereof be, That all and every trial and trials of all manner of Suits, Bills, Plaints; Informations, &c. and Issues in the Court of Exchequer, shall be made and tried by due examination of Witnes, Writings, Proofs, or by such other ways or means, as by the Court of Exchequer shall be thought expedient; and that every such Judgment, Decree or Decrees, shall be good, perfect, and in full strength, force, and effect in Law, to all intents, constructions and purposes. And yet, notwithstanding the generality of these words, if a Judgment be given upon a trial by Record, a Writ of Error doth lye thereupon; because, as to that point, this Act is but in affirmance of the Common Law.

22 E.3. nu.17.

It was petitioned in Parliament, that remedy might be found, that no Accountant in the Exchequer do run in issues before he be warned. The Kings answer was, The Proces therein shall be first a *Venire fac*, then a *Distringas*, and after a Writ out of the Chancery to the Treasurer and Barons.

51 E.3. nu.27.

It was also petitioned in Parliament, that such as owe to the King may upon their account be allowed of all such lones, as be due unto them, or to any of his Ancestors: whereunto the King answered, The Treasurer and Barons shall make allowance of due debts.

5 R.2. cap.9.
Course of the Exchequer against Law, &c.

So great care was taken by the Court of the Exchequer (which is the centre of the Kings revenue and profit) that no man might sue or plead for their discharge of any debts, account, or other demand, without having express commandment by Writ or Letter of the Great Seal. But by the Statute of 5 R.2. it appeared, that the parties ought to have been received thereunto, according to the Law, without any such Writ or Letter: and that the obtaining of such Writs or Letters, was to the great disquietness, mischief, and delay of the parties impeached, and no advantage to the King. And where before that time no plea could be allowed in the Exchequer by Attorney, but in proper person: by the said Act it is ordained that the Barons of the Exchequer shall have full power to hear every answer of every demand made in the same: so that every person that is impeached or impeachable of any cause by himself, or by any person, shall be received in the Exchequer, to plead, sue, and have his reasonable discharge without carrying or suing any Writ or other commandment whatsoever. So as by this Act both these mischiefs are provided for. And out of this Act this general conclusion may be justly collected, that such course of the Exchequer as tendeth to the disquietness, mischief, and delay of the Subject, and no advantage to the King, is against Law, and ought not to be allowed. And it is to be observed, that Britton doth joyn in this clause, The Treasurers and Barons.

* That is, by his Attorney: and therefore the admittance of an Attorney in these cases, is not *ex gratia curie* (as is laid in the common pleading) but *ex debito iustitie*. a *Tempore regis Johannis*, the Abbot of Crowlands case. *Iusticiarii hac audientes urgentes de Banco, cum Baronibus Scaccarii & Domini regis fidelibus illic residentibus colloquium, &c.* Rot. in Scaccario de Crowland. Pl. Corone coram Iustic. Itinerantibus apud Turrim London. An. 4 E.1. Rot. Claus. 13 E.1. *infra* p.121. Hil. 32 E.1. Coram Rege Wigorn. Mic. 6 E.2. in Communi Banco Despencers case. Mic. 11 E.2. Coram Rege the case of the Burgeses of Great Yarmouth.

a And into the Exchequer Chamber or the like, all cases of greatest difficulty in the Kings Bench or Common Pleas, &c. are, and of ancient time have been adjourned and there debated, argued, and resolved by all the Judges of England, and Barons of the Exchequer. See more of this Court *infra* cap. 13. pagin. 121.

4 H.6. 12.b.

5 E.4.7.

7 E.4.14.b. 16.b.

¶ A Oier & Terminer tous les causes que touchent nous debts. Here debts are taken for all manner of duties due to the King.

¶ Et auxi a nous fees. Here the tenures of the King (whereof we have spoken before) are expressed. And albeit there be many tenures of the King both in Capite, and by Knights Service of some Honour or Pannor, &c. yet there be many more by the error or negligence of Solicitors, by suing out of licences or pardons of alienation, where in troth the Pannors or Lands were not holden of the King in Capite.

Mich. 39 & 40 El.
Per tous les Justices.

But Mich. 39 & 40 Eliz. it was resolved by all the Judges of England, when I was Attorney General: That if a man purchase a Licence or Pardon, and after being called into the Exchequer do plead the Licence or Pardon,

don, that neither the purchase nor pleading is any conclusion, but the tenure may afterwards upon another alienation be traversed or denied. For the words of the Licence or Pardon be, *Quæ de nobis tenentur in capite* (ut dicitur;) for neither the charge in this case is direct, being grounded upon a Licence or Pardon, nor the plea; for the Licence or Pardon is pleaded, as it is, ut dicitur: and therefore neither the one nor the other doth conclude. But if he in his plea doth by express words (with a bene & verum est &c.) confess a tenure, in Capite, and in discharge thereof plead the Pardon or Licence in discharge thereof, there is a conclusion wrought: and so are the books to be intended: which resolution I heard and observed, and have reported it for advancement of truth and right.

Concerning Licences of Alienation, and the short pleading of Licences and Pardons, there is a profitable Statute made Anno 18 Jac. Regis, and another Anno 1 Jac. cap. 26. concerning orders of the Exchequer.

¶ Et les incident choses sans les queux, &c. Quando lex aliquid alicui concedit, concedere videtur & id sine quo res ipsa esse non potest.

¶ Et que ils eyent power a consuiter des detts que lendoit a nous dettors per ou nous puissions plus tost approcher a nostre dett. This is the ancient prerogative of the King, as it appeareth in our books.

The King brought an Action of debt in this Court against a Prior Alien. The Prior had Process against A. who detained goods from him, without which he could not answer the King. A. came and claimed the goods as his tithes as Parson of D. the Prior claimed the tithes as Parson of S. and thereupon issue taken for the King triable in the Exchequer.

If he that is in execution will in this Court confess himself debtor to the King, where he is no debtor of Record, he shall be remanded to the first prison, and after the creditor be satisfied, then to be committed unto the Fleet until he hath paid the sum confessed.

¶ Solong; le discretion des Treasurers & Barons, &c. soient a rents a ferme a eux que plus voillent doner. To the end that no Lands in the Kings hands, which ought to be to the Kings profit, should be without a Farmor that should yield a rent to the King, the Treasurer in certain cases, and with certain cautions ought to make a Warrant to the Great Seal for demising thereof, that is to say, not only of Lands extended, of Lands during the vacation of any Abbey, and of Lands seised for an Alienation without Licence, and before 23 H. 8. of Land in Ward, or the like upon uncertainties, but also of the demerits of the Crown out of Lease, &c.

The Lease will be best expressed by an example, first of Lands extended. Rex omnibus ad quos &c. Salutem. Sciatis quod per manucaptionem Walteri Mathew de Westm in Com Mid' Yeoman, & Nich. Whitfield de eadem, Yeoman. Commisimus Ricô Foster, custodiam unius shopæ, 30 acr terræ, 3 acr prati, & 4 acr pasturæ cum perti in Stanford in com Lincoln, quæ tuerunt Silvani Southorpe, quæ in manus Regis Edwardi nuper Regis Angliæ tertii pro 138 li. 6 s. 8 d. in quibus idem Silvanus præfatus nuper regi tenebat, seisi fuerunt, & in manibus nostris ea de causa adhuc existunt. Habendum à festo Sancti Michaelis Anno regni nostri 13 usque finem 10 annorum ex tunc proxime sequen & plenarie complendorum. Reddendo inde nobis per annum in custodia prædicta 25 s. prout nobis responsum est, ad festa Paschæ, & Sancti Michael' per æquales portiones. Proviso semper quod si aliquis alius dare voluerit de incremento per annum pro custodia prædicta sine fraude vel malo ingenio, quod tunc dictus Richardus tantum pro eadem solvere teneatur, si custodiam prædictam habere voluerit. In cuius rei, &c. Teste R. apud Westm. 7 die Novemb. Anno regni nostri decimo sexto.

Note by many presidents the Lord Treasurer may make a Warrant to grant the Lands extended, either for years, or quam diu in manibus nostris fore contigerit.

The Lord Treasurer made a Warrant to the Lord Chancelor to demise to John Pempons Land parcel of the Duchy of Cornwall for the term of fifteen

46 E. 3. 33.
29 Aff. 38.
7 E. 6. Estoppel.
Br. 222. pl. co. 398.

18 Jac. cap.
1 Jac. Reg. ca 26

20 E. 3. Ley. 52.
8 H. 5. 4.

38 Aff. p. 20.

1 R. 2. cap. 12.

In Original.
Anno 16 E. 4.
Rot. 12.
Nota herein five things.
1. Per manucaptionem.
2. Commisimus.
3. Custodiam.
4. Yielding a rent.
5. Proviso, quod si quis alius plus dare voluerit.
Nota Britton sup.
A euk que plais voillent doner.
Sec 27 H. 8. ca. 11

11 H.6.28.b.
8 H.6.34 Br.
Lease 71.
Register 295.
See for this word
Commisimus.
Vide 27 H.8.
ca.1. a special
Proviso for the
Lo. Treasurer.
* 32 H.6.ca.5.
17 R.2.cap.5.
4 H.4.cap.18.
Dier fo. 303.

See in the Chapter
of the Court of
Wards

* Vid. Pl. Co. 491.
* Hil. 18 E.1. f.9.
nu. 128.

Second part of the
nst. Confr. Cart.
id. supra cap.
1. arl. p. 29.

P

Mirror.
Ockham.

2 E.3.25.
Rot. Par. 31 E.1.
m. 12. Dorf.

Nota, the robbery
of the King of his
treasure is *damnum
inestimabile*.

a 2 E.3.25. Jeffe-
ry Sharlags case.
14 E.3. tit. Scire
fac. 122. 44 E.3.
27. Regist. 187.b.
Prohibit. 38. aff.
p. 20. Rot. Par.
1 R.2. nu. 64.

2 H.4.11.
Rot. Par. 2 H.4. 101
Dat' est nobis in-
telligi.

Rot. Par. 11 H.4.
54.56.64. ibid.

13 H.4.32

8 H.5. Ley 66.

20 E.3. Ley 52.

32 H.6.2...

5 E.4.4.b. 7 E.4.30.

21 E.4.44.45. c.

8 H.6.34. 36 H.6.26. Li. s. f. 62. action sur le case.

11 H.7.26. b Stat. de Rutland. 10 E.1. * Regisler 187.

F.N.B.50.f. Information de intrusion ou trans & 217.c. terra talle. Vid. 32 H.8.cap.39. 16 Eliz. Dier 328. c 14 E.3.

breve 789. 20 E.3. Ley 52. 2 H.4.9. 8 H.5.6.10. 8 H.5. Ley 66. 11 H.7.26. Pl. Com.322. Lib.6. fol.18. d 1 R.3.

cap. 14. c R.2.cap.9. Stat.15. the Barons shall hear, &c. without any writ, letter or commandment. 4 H.4. cap.9.

7 H.4. cap.11. concerning Commissions. 13 Eliz. cap.9. Sewers. 14 E.3. ca.12. Weights. 13 R.2. cap.2. No recog-

nizance or bond in double.

years in the like form of words as the before recited Lease was. This Lease was pleaded in 11 H.6. and though the Lease was by the words of Commisimus, and Commisimus custodiam terræ, &c. yet in pleading the Lessee pleaded a demise of the Land it self, and there allowed to be good, which is worthy of observation.

Vide in Original in Scaccario de Anno 21 & 22 H.7. Rot. 4. & ibid. 23 H.7. Rot. 12. many such Leases. But of ancient time, as it appeareth by Britton, both the Treasurer and Barons did demise, &c. * Letters Patents of the Alnage shall pass only by the Lord Treasurers Warrant. And the gift of the office of the Escheatoz belong to his office. Vide in Chapter of the Court of Escheatoz.

By the Statutes of 8 H.6. cap.16. and 18 H.6. cap. 6. it appeareth that the Chancelloz or Treasurer had power to make Leases in certain cases of Wards Lands: but that is altered by the Statute of 32 H.8. of creation of the Court of Wards. * Note the Statute of 18 H.6. cap.1. extends only to the Kings Warrant and not to the Warrant of the Lord Treasurer.

* It is to be observed, that when in any Act of Parliament, or other Record, the Treasurer is named for demising, or other intermeddling with any of the Kings Revenue, it is to be intended of the Treasurer of the Exchequer.

¶ De nous customes de quirs & leynes, &c. What these customs were appeareth in the Second part of the Institutes, by the Statute of Confirmation Cartarum, the last branch, and the Exposition upon the same, whereby it appeareth that the King had no Custom but such as was granted to him by Act of Parliament.

¶ L'Eschequer est un place quarre. It is foursquare, and the Carpet that sometime lay upon it had wrought in it the form of a Chesse board, and thereupon it was called the Exchequer: and about the end of the reign of E. 1. this Court was new built, and therefore in 2 E.3. it was called the novel Exchequer, and it was new built upon this occasion. Both the parts of the Exchequer were of ancient building, and weak; Fourscore and one persons (whereof the Abbot of Westminster, and forty eight of his Monks were part) brake into the Receipt, and feloniously robbed the King of a hundred thousand pounds, ad damnum inestimabile, saith the Record. All these fourscore and one were indicted of this Felony, and committed to the Tower of London, &c. and this was the occasion of the new building of both these parts of the Exchequer.

¶ Qui solement est ordeine pur le prowe le Roy. Here is a short but an essential description of the Jurisdiction of this Court, that is, for the profit of the King. This profit is either immediate, or mediate: a Immediate, as of Lands, rents, franchises, hereditaments, debts, duties, accounts, goods, chattels, and other profits and benefits whatsoever due to the King. b Mediate, as first, the privilege of the Officers and Ministers of the Court: for two things do principally support the Jurisdiction of a Court, viz. the just preservation of the dignity of it, and the due attendance of the Officers and Ministers of the same to sue and be sued in this Court. 2. c By Quo minus. 3. It extendeth (as hath been said) to the debtor of the Kings debtor. 4. To prisoners in this Court to be sued here. 5. To accountants that have entred into their account, except d Collectors of Dimes, they shall not be sued by bills, neither if he be sued in any other Court, shall he have the privilege of this Court.

¶ Ou deux Chivaliers, & 2 Clerkes, ou 2 homes lettres. 2. Chivaliers be hereafter explained. 2 Clerks, ou 2 homes lettres, the one is intended to be the Baron of Course, the other the Clerk of the Pipe.

¶ De ses fees & franchises. Of fees, that is, tenures, whereof we have spoken before. Franchises, being flowers of the Crown, are notorious and known.

¶ Et les accounts, &c. All accounts to the King ought to be made upon oath, and it is best for the King to have the accounts to be taken in this Court. for accounts taken by Commission are little for the Kings benefit. *a* The Exchequer of the Wardrobe is to make his account once in the year in the Exchequer. *b* Once in the year the Treasurer of Ireland shall account in the Exchequer of England. *c* The accounts of the Exchequer to be more shortly heard, made and ingrossed, &c.

a Stat. de Rutland.
101.
b Rot. Par. 21 E. 1.
Rot. 3.
c 5 R. 2. cap. 11.

d The Treasurers of the Kings Chamber are only accountable to the King, and not in this Court of Exchequer, but yet the King, by the advice of some whom he may trust in secret doth take account thereof, as before is said.

d Rot. Par. 3 H. 6.
nu. 47.

Vide recordum & Processum contra Petrum de Rivalles alias Petrum de Oriall, Thesaurarium & Camerarium Regis totius Angliæ & Hiberniæ, & custodem omnium forestarum, & omnium portuum maris de compoto redditu de officiis predictis, & de iudicio contra ipsum reddito per defaultam, quia venire recusavit nisi salvo Regis conductu, quod Rex denegavit, quasi insolitum & indebitum.

18 H. 3. nu. 110.

¶ Per le view de un Sovereign que est Treasurer Denglitterre. Of this great Officer we have spoken before.

¶ Le 2 Chivaliers soloient ée 2 Barons, &c. And herewith agreeth Bracton, Comites vero vel Barones non sunt amerciandi, nisi per pares suos secundum modum delicti, & hoc per Barones de Scaccario vel coram Rege.

Bracton lib. 3. fol.
116. b.
See the 2. part of
the Inst. Mag.
Carta. 14.

¶ En cel place sont auxi Chamberleins, & plusors auters ministers, que ne touch my molt a la Ley. Hereof we have spoken before.

¶ Nul Common plea ne soit disformes tenuis in Leschequer enconter le form del Grand Charter. Upon this Act four several opinions have been conceived. 1. That this Court might originally have holden plea of all Common pleas; and this they think to prove by the title of Glanvils book, which taking it altogether is this. Tractatus de legibus, &c. tempore Henrici 2. compositus, iustitiæ gubernacula tenente illustri viro Ranulpho de Glanvilla, juris Regni & antiquarum consuetudinum eo tempore peritissimo, & illas solum leges continet & consuetudines, secundum quas placitatur in Curia Regis ad Scaccarium coram Iusticiariis ubicunque fuerint. 2. Others think that at the making of Magna Carta the Court of the Exchequer was parcel of the Kings Bench, which they infer upon the words of this Act, No Common plea shall be holden in the Exchequer against the great Charter, In which Charter Curia nostra is only intended of the Kings Bench. 3. That in Magna Carta, to which this Statute refers, there is no restraint, and therefore this Statute of Artic' super Cartas restraineth not. 4. That the Ordinance of Rutland is no Statute, but made by the King for the order of this Court. In the Second part of the Institutes, in the Exposition of Magna Carta, cap. 11. we have spoken nothing of this matter, but thought good to refer it to this Act being his proper place.

Artic. sup. Cart.
Ubi supra. Stat.
de Rutland.
10 E. 1. acc.
* Pl. Com. 209.

As to the first: It appeareth by the said ancient Authors, and by the authority of our books, that the Institution and jurisdiction of this Court have been only for the Kings business and profit, &c. as hath been said. For the Title of Glanvils book: First, It was never of his own making for he would never have given himself such high and superlative Titles, as Illustri viro juris Regni, &c. eo tempore peritissimo. 2. He that added the title speaketh of three Courts, viz. 1. In Curia Regis. 2. Ad Scaccarium. 3. Coram Iusticiariis ubicunque fuerint. For the first, viz. in Curia Regis, he intendeth Justice in Eyre, &c. for example. Inquirentur purpresturæ vel in Capitali Curia, vel coram Iusticiis Regis ad tales Inquisitiones faciend' in diversas Regni partes transmissas per Juratam patriæ sive vicinæ. 2. Ad Scaccarium, this Court he doth mention but once (that I remember in all his book in these words. Si vero Dominus Rex aliquam custodiam alicui commiserit, tunc distinguitur utrum ei custodiam pleno jure commiserit ita quod nullum eum inde reddere compotum oporteat ad Scaccarium, which

Glanv. lib. 9.
cap. 11. &c.

Lib. 7. cap. 10.

agreeth

agræth with the original institution and jurisdiction of the Court concerning the profit of the King. 3. Coram Justiciariis ubicunque fuerint is the Kings Bench, whereof Glanvil was Chief Justice, and of the Pleas in that Court is in effect the sum of his Treatise.

* The Author of this book is Ger-vasius Tilburienfis a learned man and an Officer of the Exchequer cap. 1.

As to the second: 1. Glanvil who wrote in the Reign of H. 2. doth (as hath been said) name the Exchequer as a distinct Court for the accounts to be made to the King. 2. In the * Black Book of the Exchequer dedicated to H. 2. of the observations of the Exchequer, it is said, Nulli licet statuta Scaccarii infringere vel eis quavis temeritate resistere, habet in hoc commune cum ipsa Domini Regis Curia, in qua ipse in propria persona jura discernit, nec recordationi nec sententiæ in eo lata liceat alicui contradicere. Whereby it appears that the Kings Bench and Exchequer were distinct Courts in the Reign of H. 2.

Regist. 187. b.

To the third, our Statute is intituled Articuli super Cart, that is, Articles upon Magna Carta & Carta de Foresta: so as the sense of this Act is, that the Exchequer should hold no common plea no more then the Kings Bench; for the form of the Great Charter is, Quod communia placita non sequantur Curiam nostram. Secondly, our Statute is but an affirmance of the Common Law concerning the jurisdiction of this Court, and this doth expressly and notably appear in the Register in these words. Rex Thesaurar & Baronibus de Scaccario Salutem. Cum secundum legem & consuetudinem Regni nostri communia placita coram vobis ad Scaccarium prædict' placitari non debeant, nisi placita illa nos vel aliquem ministrorum nostrorum ejusdem Scaccarii specialiter tangerent, &c. Here it is to be observed that this Writ of prohibition is not grounded upon the Statute of Artic' super Cart or any other Statute, but upon the Common Law and custom of the Kingdom, which concerning the jurisdiction of this Court doth in omnibus agree with our ancient Authors and Year-books, wherein you shall observe an admirable harmony and consent in so many successions of ages.

Stat. de Rotland. 10 E. 1. Vid. Pl. Com. 221. per 2 Barons. Regist. 187. b.

Respondet superior. Inc' Præcept' de Termino Sancti Hil. Anno 14 E. 3. ex parte Remem. Regis Rot. 9. in Scac. Coronator.

This is a Statute provided by the title thereof, and for that it is entred in the Parliament Roll, and in the Register 187. b. it is called Statutum de Rotland.

Now it is good to know, how the Law commonly called Respondeat superior, holdeth in this Court and in other Courts, and first by the Records of this Court, and then by Acts of Parliament.

Memorand' quod allocuto præfato Willielmo morantur nuper Vic' super levatione 40 s. extract' in magno Rotulo de anno 12 in Kanc' sub nomine William Herlizan unius Coronatorum Com' Kanc' pro falso retorno. Idem Willielmus Vic' dic' super sacramentum suum quod præfatus Willielmus Herlizan non habet terr' vel tenta, bona, seu catalla in balliva sua, nec habuit unde dict' denar' levare possint. Et quia ipse Coronator electus erat per Comitatum juxta formam statuti, &c. ita quod in defectu ejusdem Coronator' totus Comitatus ut elector & superior, &c. habeant Regi respondere, præcip' nunc Vic' quod de terris & tenementis hujusmodi totius comitatus in balliva sua fieri fac' prædict' xl s. & eos habeat hic in C'ro clausi Pasche super proffrum suum Regi solvend'. Ad quem diem Vic' non retorn' breve. Ideo sicut alias in C'ro Sancti Joh' Baptiste. For more presidents in the Exchequer of this kind, s' Mic. 17 R. 2. Rot. Mich. 19 H. 8. Rot. 4. Eborum. Pasch. 30 H. 8. Rot. 30. Wiltes. Mich. 5 E. 6. Rot. 130. &c. Stat. de 52 H. 3. de Scaccario.

How it holdeth in other Courts, Vid. 11 E. 2. tit. det. 172. where the Sheriffs be removable as in London for their insufficiency, respondeat superior, that is, the Mayor and Commonalty of London.

45 E. 3. 9, 10. Prior datife & removeable suffer eschape, respondeat superior. 14 E. 4. Pur insufficiency del Bailie dun libertie respondeat Dominus libertatis. Vid. 44 E. 3. 13. 50 E. 3. 5. 14 H. 4. 22. 11 H. 6. 52. 30 H. 6. 32. W. 2. cap. 2. Si non habeat Balivus unde reddat, reddat superior.

2 H. 6. cap. 10.

There is a general Statute concerning all the Courts of the King, worthy of observation in these words.

Item,

Item, To the intent that better and more sure Government be had within the Courts of our Lord the King for his profit, and ease of his people, which have to pursue, and do in the same. It is ordained and established that all the Officers made by the Kings Letters Patents Royal within the said Courts, which have power and authority by vertue of their offices of old times accustomed, to appoint Clerks and Ministers within the same Courts, shall be charged and sworn to appoint such Clerks and Ministers, for whom they will answer at their peril, which be sufficient, faithful, and attending to that which pertaineth to them in performance of the business, as well of the King, as of his people.

In the same manner we have ordained in the right of the Barons of the Exchequer, and we have expressly charged them in our presence, that they shall do right and reason to all our subjects, great and small, and that they shall deliver the people reasonably and without delay of the business which they have to do before them, without undue tarrying as hath been done in times past.

It was resolved in the case of Auditor Povie, that if A. be indebted to B. and B. is indebted to the King, that the King by his prerogative may levy his debt upon A. but this levying ought to be of an immediate, and not of a mediate debtor to the debtor of the King. As if A. be indebted to B. and B. to C. and C. to the King, the King cannot levy his debt of A. for then it might be levied in infinitum, quod reprobatur in jure, and this appeareth in our books.

For assignment of debts made to the King, see in my Reports.

By the Statute of 7 Jac. no debt shall be assigned to the King his heirs or successors by or from any debtor or Accountant to his Majesty, his heirs or successors, other then such debts as did before grow due originally to the Kings debtor.

No obligation, recognizance or Statute made for saving harmless or performance of Covenants, &c. though it be forfeited, or for any cause, other then a due debt, can be assigned to the King by any of his debtors. These assignments of debts to the King are not favoured in Law when the Kings immediate debtor is able to pay his debt: for by the assignment at the Kings suit, the body, lands and goods of the debtor to the Kings debtor are liable to the King, whereas at the subjects suit, he could have had but his body only by Capias ad satisfaciend, or his goods only by Fieri fac, or half his lands and goods by Elegit. By the Statute of 1 R. 2. a penalty is provided for him who confesseth a debt to the King (that is not debtor to the King of record) to delay the execution of others.

The Barons of the Exchequer are the sovereign Auditors of England, for if a man assign Auditors to a Bailiff or receiver to account, and the Auditors will not allow just and reasonable allowances but commit the Bailiff or receiver to prison, such prisoner may have an original Writ of Ex parte talis returnable before the Treasurer and Barons of the Exchequer, &c. for his relief in that behalf.

Upon the Accountant in the Exchequer of B. Fulham the Kings Butler, he demanded allowance of certain parcels of wines given by the King to certain persons by word of mouth without writing, and it was disallowed by the rule of the Court.

Upon the account in the Exchequer of Richard Bury Keeper of the Wardrobe, he demanded allowance for certain Vessels of gold and silver, and certain Jewels given by the King ore tenus to Isabell Queen of England, and others to Philip Queen of England Consort of the King, & non allocatur by the like rule of the Court: for the gifts by word in both these cases are void, which with Petitioners case that followeth are good rules to establish the Law in a case wherein there hath been variety of opinions in our books.

20 E. 3. cap. 2.
Hereby it appeareth that to them belongeth doing of right and reason in legal proceedings.

Mich. 13 Jac. in Bank le Roy in Prohibition.
8 H. 5. 4. 45 E. 3.
Decies tantum 12.

Lib. 5. fol. 89. 90.
7 Jac. cap. 15.

1 R. 2. cap. 12.

Fleta. l. 6. cap. 64.
2 E. 3. 12. 14 E. 3.
account 74.
8 E. 4. 16. 1. N. B.
129. f. Regist. 137.

Rot. Claus. anno
4 E. 3. m. 2.

Rot. Claus. anno
4 E. 3. m. 19.

35 H. 8. Prærog. B.
61. 14 E. 4. 2. a.

Hil.

Hil. 6 E.4. Rot.14. in Saccario Inter Brevia in Dorf. Petilians case. A warrant under the Signet is not sufficient to issue any Treasure of the King out of the Receipt, but it must be under the Great or Privy Seal.

Regist. 192. a.b.
& 193.

If the Barons do not allow unto an Accountant before them such just demands as he maketh, he may have a Writ De allocatione facienda, directed to the Treasurer and Barons, commanding them to allow the same.

Of a Liberate for payment of a pension or debt, &c.

A Liberate is an original Writ issuing out of the Chancery, and is directed to some Officers that have of the Kings money in his hands to pay over a pension, debt, or duty. And it is not called a Liberate by reason of any such word contained in the Writ, (as for the most part Writs are) for the words be Quod solvas or solvatis, but it is so named ab effectu. But such a Writ cannot be directed to the Kings Fermor to pay a pension, &c. because, though the ferm or rent be behind, yet it is not the Kings until it be paid, and all the Writs in the Register are directed as is aforesaid to Officers, as to the Treasurer and Chamberlain, to a Customer, &c. The form of the Writ appeareth in the Regist. 192, 193. And there it appeareth that there be two kinds of Writs of Liberate, one doth mant or currant and continual, and another hac vice and particular. And it is sometimes accompanied with a Writ of Allowance, as there you may read.

If the Officer have sufficient in his hand to pay, &c. at the time of the Liberate delivered to him, he is become debtor (by Act of Law) to the party, for which he may have an action of debt: but after the Liberate sued out, and before the delivery, the King may discharge the Officer of the Kings money in his hands. And if the King decease before the delivery of the Liberate, the Officer hath no warrant to pay it.

If the Officer at the time of the delivery of the Liberate have of the Kings money to pay but part, and not the whole, the Writ is no warrant to him to pay part. See 21 H.6. tit. det. 43. 27 H.6.9. 37 H.6.24, 25. 9 E.4.12.14. 1 H.7.8. 2 H.7.9. F.N.B.121. f. Br. Tit. Taile Descchequer.

Vid. Mag. Cart. cap.22. Liberationem antiquitus Stať, id est, precium antiquitus Statutum.

The course of the Exchequer is, that as soon as a Sheriff or Escheator enter into his account for issues, amerciaments and mean profits, to mark upon his head O. Ni. which is as much as to say, Oneratur, nisi habeat sufficientem exonerationem, and presently he is become the Kings debtor, and a Debt set upon his head, and thereupon the parties peravails are become debtors to the Sheriff or Escheator, and discharged against the King.

Dier 7 El.238.

The ancient course of the Exchequer hath been, that if in an Information of Intrusion into lands or tenements the Defendant plead not guilty, he shall lose the possession; and it is said that the reason of this course is, first for that regularly the Kings title appeareth of the record, and therefore the Defendant may take knowledge thereof, and the rather for that in every information of Intrusion it is specified of whose possessions the lands, &c. were: but if the Defendant plead not guilty, the Kings learned Council cannot know the Defendants title, to provide to answer the same, as the Defendant may do to the Kings title.

CAP. XII.

A Court to enquire of, and certifie unlawful and untrue Accounts in the Exchequer.

This Court Atteth by Commission under the Great Seal by force of the Statute of 6 H. 4. directed and sent, together with the tenour of the account, to the most lawful and discret persons in the Counties, where the Accountants be Officers, to enquire and certifie the profits which the Sheriffs, Escheators, Alnagers, Controllers, and other the Kings Officers have received, &c. by them upon their said accounts deceitfully concealed, &c. and being attainted of the said frauds and deceits, they shall forfeit treble the value, and their bodies to prison, until they have made fine and ransome to the King, after the discretion of the Judges.

6 H. 4. cap. 3.
See Rot. Parl.
6 H. 4. nu. 59. for
the Print swerveth
from the Record.

But (as hath been said before) it is certain, that it is ever most for the Kings benefit that Accounts be yearly taken in the Exchequer, and not by Commission: and to that end an Ordinance was made in the Parliament holden Anno 21 E. 1. in these words: Dominus Rex vult & precipit, quod de cetero singulis annis semel in anno compotus Vasconia & Hibernia per Constabularium Burdegalia, & Thesaurarium Hibernia reddantur ad Scaccarium Anglia, & ibid. audiantur per Thesaurar & Barones suos. A fortiori of Accounts within the Realm.

Rot. Parl. Anno
21 E. 1. Rot. 2.
Vide Rot. Parl.
28 E. 1. Nich. de
Clere Thesaurarius
Hibernia.

And of the Court of the Exchequer we will end with an old Verse ingraven in stone in the Exchequer wall,

Ingrediens Jani, rediturus es æmulus Argi.

The Chief Baron is created by Letters Patents, and the Office is granted to him Quamdiu se bene gesserit, wherein he hath a more fixed estate (it being an estate for life) then the Justices of either Bench, who have their Offices but at will: And Quamdiu se bene gesserit must be intended in matters concerning his Office, and is no more then the Law would have implied, if the Office had been granted for life. And in like manner are the rest of the Barons of the Exchequer constituted, and the Patents of the Attorney General and Solicitor are also Quamdiu se bene gesserit.

See Lit. 1 part of
the Instit. Sect.

CAP. XIII.

The Court of Equity in the Exchequer Chamber.

The Judges of this Court are the Lord Treasurer, the Chancellor and Barons of the Exchequer. Generally, their jurisdiction is as large for matter of Equity, as the Barons in the Court of the Exchequer have for the benefit of the King by the Common Law: for all the proceedings both in this Court of Equity and of that by the Common Law, ought to be, as hath been said, for the profit or benefit of the King, or touching the King: and if in either Court they hold any plea, which is not for the profit or benefit of the King, or which toucheth not the King, there lyeth a Prohibition, which, as is aforesaid, appeareth in the Register: for all are said Communia Placita which are not Placita coronæ.

Art. cler. cap. 4.
Regist. fol. 187. b.
Stat. de Rotland.
cap. ultimo.

Cancell.

By the Statute of 33 H. 8. cap. 39. they have full power and authority to discharge, cancel and make void, all and singular Recognizances and Bonds made to the King for payment of any debt or sum of money, or for performance of conditions, &c. upon shewing the Acquittance, &c. or any proof made of payment and performance. Also to cancel and make void by their discretion all Recognizances made for any appearance or other contempt. And that if any person of whom any such debt or duty is demanded, alledge, plead, declare, or shew in the said Court sufficient cause and matter in Law, reason and good conscience in bar or discharge of the said debt or duty, and the same matter sufficiently prove in the said Court: then the said Court shall have power and authority to judge and allow the said proof, and clearly acquit and discharge such person and persons. Also Lands chargeable to the Kings debts in the seisin and possession of divers and sundry persons, the same shall be wholly and * intirely, and in no wise severally liable to the payment of the said debt and duty: but in the said Act of 33 H. 8. all manner of estates, rights, titles, and interests, as well of inheritance as freehold, other then Joyntures for term of life, are excepted.

Cancell.

Matter in Law,
reason and good
conscience.

Lib. 7. fo. 18. Sir
Thomas Cecils
case, and resolved
by English Bill in
the Exchequer
Chamber.

See there divers
presidents.

* Lib. 7. fo. 20. ubi
supra.

Et lib. 3. fo. 12.
Sir Wil. Herberts
case.

Inheritance.
Freehold.

By the said Act of 33 H. 8. special Jurisdiction is given to the Court of Augmentation, when title is pretended to any Mannors, Lands, Tenements, or Hereditaments, bargained, sold, or exchanged by the King, upon which Letters Patents there is or shall be reserved any annual Rents or Farms, payable in the Court of Augmentations, and divers other clauses which gave to the Court of Augmentation jurisdiction. But the Court of Augmentation is but in shew annexed to the Court of the Exchequer, and not de jure, as hereafter it appeareth in the Chapter of the Court of Augmentations. And therefore this Court of Exchequer Chamber cannot claim any Jurisdiction given and appropriated to that Court, for that the Court of Augmentations is dissolved.

32 E. 3. tit. Aide
Le Roy 1.
35 H. 6. 56.

J. S. holdeth Lands of the King by fealty and yearly rent, and maketh a Lease thereof for years to A. B. pretends that J. S. leased the same to him by a former Lease; albeit there is a rent issuing out of these Lands to the King, yet neither A. nor B. can sue in this Court by any privilege in respect of the rent, for that the King can have no prejudice or benefit thereby: for whether A. or B. doth prevail, yet must the rent be paid: and if this were a good cause of privilege, all the Lands in England holden of the King by rent, &c. might be brought into this Court.

But if black acre be extended to the King for debt of A. as the Land of A. and the King leaseth the same to B. for years, reserving a rent: C. pretends that A. had

had nothing in the Land, but that he was seised thereof, &c. this case is within the privilege of this Court, for if C. prevail the King loseth his rent.

The King maketh a Lease to A. of Black acre for years reserving a rent, and A. is possessed of a term for years in White acre, the King may distrain in White acre for his rent, yet A. hath no privilege for White acre, to bring it within the Jurisdiction of this Court.

Note Reader, where our Books say, that the King may distrain for his rent in all the other lands of his tenant, of whomsoever the same be holden, it is thus to be understood, that the other Lands must be in the actual possession of the Kings tenant, for he cannot distrain in those Lands in the possession of his tenant for life, tenant for years, or at will.

Some are of opinion that a Court of Equity was holden in the Exchequer Chamber before the Statute of 33 H.8. And then it must be a Court of Equity by prescription: for we find no former Act of Parliament that doth create and establish any such Court: and if it be by prescription, then judicial presidents in course of equity must guide the same: As to the Jurisdiction, certain it is that there hath been of ancient time an Officer of the Exchequer called Cancellarius Scaccarii, of whom amongst other Officers of the Exchequer Fleta saith thus: Officium vero Cancellarii, est sigillum regis custodire simul cum controrotulis de proficuo regni. And the Mirror saith, Perjure est per la ou il fuit Chancellor del' Eschequer vea a tiel a faire luy acquittance de tant que a voit pay al Eschequer de la deit le Roy south le seale del' Eschequer ou delay a faire acquittance de tiel jour tang; a tiel jour, &c. This ancient fee is 40 marks. Livery out of the Wardrobe 12 li. 17 s. 4 d. in toto 39 li. 10 s. 8 d. *See* 25 H.8. cap. 16.

* The Exchequer hath a Chancellor and Seal, and the Writs usual in the Chancery in the Exchequer to seise Land, are more ancient then Prerog. Regis.

Hereupon it is collected, that seeing there hath been time out of mind of man a Chancellor of the Exchequer, that there should also be in the Exchequer a Court of Equity.

Where some do vouch 22 E.4. tit. Petition 9. for the naming of the Chancellor of the Exchequer in granting of Writs of search to the Treasurer and Chancellor, the book is false printed, for it should be the Chamberlains and Treasurer of the Exchequer: for no Writ of search is directed to the Chancellor, &c. but to the Treasurer and Chamberlain of the Exchequer, who have the custody of the Records, &c.

a We find a Petition of the Commons in 2 H. 4. that no Writs of Privy Seals be sued out of the Chancery, Exchequer, or other place, to any man to appear upon a pain, &c. to answer, &c. contrary to the ordinary course of the Common Law: whereunto the King answered, That such Writs should not be granted without necessity.

b Anno 3 H.5. the Commons petitioned that all Writs of Subpoena and Certis de causis going out of the Chancery and the Exchequer might be inrolled, and not granted of matters determinable at the Common Law on pain of 40 li. The Kings answer was, That he would be advised.

c So as in the Exchequer there are these seven Courts. 1. The Court of Pleas. 2. The Court of Accounts. 3. The Court of Receipt. 4. The Court of the Exchequer Chamber being the * Assembly of all Judges of England for matters in Law. 5. The Court of Exchequer Chamber for errors in the Court of Exchequer. 31 E.3. cap. 8. & 31 Eliz. ca. 1. 6. A Court in the Exchequer Chamber for errors in the Kings Bench. 27 Eliz. ca. 8. 31 Eliz. ca. 1. Co. pl. Intr. fo. 2. 24. 37. And 7. This Court of Equity in the Exchequer Chamber.

44 E.3. 45.

13 E.4. 6.

8 H.5. 4.

Pl. com. 323. a.

This prerogative holdeth not only in case of Rent service, but in case of a Rent charge and Rent seek.

Cancellarius Scaccarii.

Mirror ca. 2. §. 13.

& cap. 5. §. 2.

* Pl. com. 321.

a Rot. Par. 2 H.4.

nu. 69.

b Rot. Parl. Anno

3 H.5. nu. 46.

c 7 H.6. 44.

6 H.7. 15.

8 H.7. 13.

Lib. 1. fo. 11.

Ver. N.B.

* Rot. Claus. in

Dorf. An. 13 E.1.

in schedula pend.

Et si contingat

quod, &c. Vid. sup.

pa. 110. 31 E.3.

ca. 8. 31 Eliz. ca. 1.

27 Eliz. cap. 8.

31 Eliz. cap. 1.

Co. pl. Intr. fo. 2. 24.

37.

C A P. XIV.

Of First-fruits and Tenths Ecclesiastical.

Stat. de 32 H.8.
cap. 45.
Rot. Par. 47 E.3.
nu. 30.
7 H.4. nu. 43. acc.

26 H.8. cap. 3.
2 & 3 Ph. & M.
cap. 4.

1 Eliz. cap. 4: ob-
serve the alterati-
on and alternation

25 H.8. cap. 5.
1 Eliz. cap. 4.

a Wall. An. Dom.
1316. Trivet.
Ranulphus Ci-
strensis. li. 7. c. 42.
Polyd. Virg. lib. 8.
cap. 2. Platina.
Fox, &c.
b 2 E.3. Rot. clauf.
m. 4.
c Parl. 1 R. 2.
nu. 66.
d Rot. Par. 4 R. 2.
nu. 44.

e Note they were
not so ancient
with us as is
pretended.
f Rot. Par. 6 R. 2.
nu. 50.
g 6 H.4. cap. 1.

h Rot. Par. 9 H. 4.
nu. 43.

i 19 E. 3. tit. Ju-
risdiction 22.
k 26 H. 8. cap. 3.

A Court of the First-fruits and Tenths was raised, Officers constituted, of Chantelloz, Treasurer, Kings Attorny, two Auditoz, and two Clerks: Authority given them to compound for First-fruits, Bonds taken theretoze should be of like force as a Statute Staple: but this Court was dissolved by Queen Mary Parl. 1 Sess. 2. cap. 10.

These were granted to the Crown by the Statute of 26 H. 8. cap. 3. But all the Clergy were exonerated and discharged thereof afterwards, Anno 2 & 3 Ph. & Mar. cap. 4.

The Statute of 26 H. 8. revived, and First-fruits and Tenths of the Clergy re-united to the Crown by Anno 1 Eliz. cap. 4. But no Court is revived, but First-fruits and Tenths to be within the rule, survey, and government of the Exchequer, and created a new Office, and Officer, viz. a Remembrancer of the First-fruits and Tenths of the Clergy, who taketh all compositions for the said First-fruits, and Tenths, and maketh proces against such as pay not the same.

First-fruits, or Annates, Primitiæ, are the First-fruits after avoidance of every Spiritual Living for one whole year (except Vicarages not exceeding 10 li. and Parsonages not exceeding 10 Marks) but all are to pay Tenths.

Ecclesiastical Livings were sometimes valued by a Book of Taxation made in 20 E. 1. which remaineth in the Exchequer, and by another taxation in 26 H. 8. which also remaineth in that Court. And according to this latter taxation are the values of Ecclesiastical Livings computed for the First-fruits and Tenths. What Pope first imposed First-fruits, until a Historians do agree, I will not trouble my self.

What we find of Record concerning First-fruits, we will summarily relate.

b The King forbiddeth H. P. the Popes Runtio to collect First-fruits, &c.

c That the Popes Collector be willed no longer to gather the First-fruits of Benefices within this Realm, being a very novelty, and that no person do any longer pay them.

d The Commons do petition that provision may be made against the Popes Collectozs for levying of the First-fruits of Ecclesiastical dignities within the Realm. The answer of the King in Parliament is, There shall be granted a Prohibition in all such cases where the Popes Collectors shall attempt any such novelties.

f Upon complaint made by the Commons in Parliament, The King willeth that Prohibitions be granted to the Popes Collectors for receiving of First-fruits.

g Against First-fruits by Arch-Bishops and Bishops to the Pope of Rome, terming it a horrible mischief and damnable custom.

h It is enacted, that the Popes Collectors should not from thenceforth levy any money within the Realm for First-fruits of any Ecclesiastical dignity by any provision from Rome upon pain of the Statute of Provisoers: but this is omitted out of the Print of 9 H. 4. cap. 8.

i The Bishop of Norwich had in 19 E. 3. by prescription time out of mind of man First-fruits within his Dioces of all Churches after every avoidance. But these also were given to the Crown & by the Statute of 26 Hen. 8. cap. 3.

Tenths Ecclesiastical, Decimæ, these are the Tenth part of the value of all Ecclesiastical

Ecclesiastical Livings yearly payable to the King, his Heirs and Successors by the said Statute of 26 H. 8. and 1 Eliz. to be valued as is abovesaid.

These the Pope (as the Canonists hold) pretend to have De jure Divino, as due to the High Priest by pretext of these words, *Præcipe Levitis atq; denuncia-* Num. 18. 26. &c.
Vi. Jerom. in Eze.
cap. 44. v. 28, &c.
cum acceperitis à filiis Israel decimas quas dedi vobis, primitias earum offerre Domino, id est, decimam partem decimæ, ut reputetur vobis in oblationem primitiarum tam de areis, quam de torcularibus & universis quorum accipietis primitias offerre Domino, & date ea Aaron Sacerdoti. But the Parliaments in 25 H. 8. and 26 H. 8. were not of opinion that these Tenthys did belong to the Bishop of Rome; as by the several preambles thereof appeareth, which we have added; for that we have endeavoured to shew through all this work the several claims or presences of every thing whereof we have treated. And King Philip and Queen Mary yielded not these Tenthys to the Pope, but (as hath been said) by authority of Parliament discharged the Clergy thereof: which they would never have done, if they had taken them to be due to the Pope De jure Divino. And the Bishop of Norwich could not have prescribed to have First-fruits within his Dioces, if they had been due to the Pope De jure Divino: and the rather for 19 E. 3. tit. Jurisdiction, ubi sup. that Anthony de Becke, for whom the prescription was made, was a retainer to the Court of Rome, and made Bishop of Norwich by the Pope.

CAP. XV.

The Court of Augmentations of the Revenues of the Crown of England.

This Court was erected by authority of Parliament in Anno 27 H. 8. consisting of a Chancellor, Treasurer, Attorney, Solicitor. And all lands, &c. belonging to Monasteries, and purchased lands were within the survey and governance of this Court. This Court could not be erected but by Parliament, because a Chancellor and a Court of Equity were constituted. More hereof in the next Chapter.

C A P. XVI.

The Court of General Surveyors of divers of the Kings lands with power to make Leases for twenty one years erected by Act of Parliament in 33 H. 8.

33 H. 8. cap. 39.

Bract. Nihil tamen
conveniens est
naturali æquitati,
unumquodque dis-
solvi eo ligamine
quo ligatum est.
7 E. 6. cap. 2.
1 Mar. cap. 10.

BOTH these Courts King H. 8. by his Letters Patents Anno Regni sui 38. dissolved, and erected a new Court of Augmentations by his Letters Patents. The dissolution was holden void, because they were created by authority of Parliament. Vid. the rehearsal of the Statute of 7 E. 6. cap. 2. and the erection was also void for the cause aforesaid. And thereupon the said Letters Patents, as well for the dissolution of the former, and for the erection of the new Court of Augmentations were confirmed and established by the said Act of 7 E. 6.

Dier 4 Eliz. 16.
So resolved by all
the Judges.

Queen Mary according to the power given to her for dissolution of the said Court by Act of Parliament holden the fifth of October in the first year of her Reign, did afterwards by her Letters Patents, bearing date 23 Januarii in the same year dissolve the said Court of Augmentations: and the next day following by other Letters Patents united the same to the Exchequer, which was utterly void, because she had dissolved the same before: so as she pursued not her authority.

CAP. XVII.

*The honourable Court of Chivalry before the
Constable and Marshal.*

R Ot. Pat. 12 H. 4. m. This Court is called Curia Militaris, and Rot. Parl. 2 H. 6. nu. 9. the Marshal Court. ¶ *The Stile of the Court.*

The Judges of this Court are the Lord Constable of England and the Earl Marshal of England, and this Court is the fountain of the Marshal Law. And the Earl Marshal is both one of the Judges, and to see execution be done. ¶ *The Judges.* 43 E. 3. fol. 3. See the First part of the Institutes, Sect. 745. many other authorities cited.

Constable or Cunstable is compounded of two Saxon words, Cyninge per contractionem Kinge, and stable, id est, columnen, quasi columnen Regis, anciently written Cuningstable. Marshal anciently written Marcalc, likewise of two Saxon words, viz. Marc for equus; and Stalc curator, quasi curator equorum: For the Marshal Marischallus, and the derivation thereof, see the First part of the Institutes, Sect. 102. fol. 74. Sect. 154. fol. 106. Sect. 745. fol. 391. ¶ *The name.* First part of the Institutes, Sect. 102 & 153.

This Court of Chivalry was anciently holden in the Kings Hall. ¶ *The place.*

The jurisdiction is declared by the Statute of 13 R. 2. Stat. 1.

Because the Commons do make a grievous complaint, that the Court of the * Constable and Marshal have incroached to them, and daily do encroach contracts, covenants, trespasses, debts and detinues, and many other actions pleadable at the Common Law, in great prejudice of the King and of his Courts, and to the great grievance and oppression of his people, The King willing to ordain a remedy against the prejudices and grievances aforesaid, hath * declared in this Parliament by the advice and assent of the Lords Spiritual and Temporal the power and jurisdiction of the said Constable in the form that followeth. ¶ *The Jurisdiction.* Rot. Par. 8 R. 2. nu. 31. not in print 13 R. 2. Stat. 1. cap. 2. Rot. Parl. 8 H. 4. nu. 38. * The Judges, Vide infra. 1 H. 4. cap. 14. * Nota, declared.

To the Constable it appertaineth to have conuſance of Contracts and deeds of arms, and of war out of the Realm, and also of things that touch war within the Realm, which cannot be determined or discussed by the Common Law, with other usages and customs to the same matters pertaining, which other Constables have heretofore duly and reasonably used in their time, joyning to the same that every Plaintiff shall declare plainly his matter in his petition afore that any man be sent for to answer thereunto. And if any will complain that any plea be commenced before the Constable and Marshal, that might be tried by the Law of the Land, the same Complainant shall have a Privy Seal of the King without difficulty directed to the said Constable and Marshal to surcease in that plea, till it be discussed by the Kings Council, if that matter ought and of right pertaineth to that Court, or otherwise to be tried by the Common Law of the Realm of England, and also that they surcease in the mean time. ¶ *The power and jurisdiction.*

See the Third part of the Institutes, Cap. High Treason, pag. 26. Rot. Pat. 25 E. 3. parte 1. m. 16. 1 H. 4. between the Lord Morly and the Earl of Sarum, the Record whereof we have ſeen. Rot. Pat. 2 H. 4. parte 1. m. 7. between Kighly and Scroop. Rot. Pat. 3 H. 4. Ballethuls case. Rot. Vafcon. 9 H. 5. nu. 14. Bullemers

lemers case. Rot. Parl. 21 R. 2. nu. 19. &c. Rot. Parl. 2 H. 6. nu. 9. Holl. Chron. 424. 3 H. 4. Sir John Annelleys case. See this case Walsing. p. 237. Duellum percussum. Ibid. 8 R. 2. 446. John Wallhes case. For this case of Wallh, see Walsing. p. 311. and Stows Annals 477. Howes Chron. 8 H. 6. 371. between John Upton and John Down. Vide Stowes Survey of London 385. See this case. Rot. Pat. 8 H. 6. parte 2. m. 7. Annals 609. Stow. Ibid. Anno 25 H. 6. Anno Domini 1446. between John Davye and William Catur his master, Annals 655. ibid. 386. batel joyned between Thomas Fitz-thomas Prior of Kilman and James Butler Earl of Ormond; but when it came to the point the King forbade it. Vide Rot. Parl. 2 H. 6. nu. 9. John Lord Talbot Lieutenant of Ireland accused the Earl of Ormond of High Treason before the Earl of Bedford Constable of England in his Marshals Court, the King did abolish the accusation.

* Deut. 19. 18.
And the judges
shall make diligent
inquisition, and if
the accuser be
found false, and
that he hath given
false witness a-
gainst his brother,
then shall you do
to him as he had
thought to do to
his brother, and
thou shalt put evil
away from the
middest of thee.

What judgment shall be given when either party is vanquished, see the Articles of the Duke of Glouc' Constable of England about the beginning of the Reign of R. 2. The Law of arms is, that the Appellant being overcome shall incur the same punishment, that the Defendant ought to have done if he had vanquished.

See an ancient Manuscript in French entituled Modus faciend' Duellum corā Rege. Bone foy & droit & Ley de Arms voet, quel appellant encourage mesme peyne que le defendant deveroit, sil soit convict & discomfit. * And this seemeth to be consonant to the Law of God.

This Manuscript treateth both of the jurisdiction and manner of the proceeding before the Constable and Marshal, and for that it is long, and I doubt not but copies thereof are in many hands, I have not inserted it here.

There are many in forain parts that have written of Combats, &c. in Latine, French, and Italian. As Alciat, Lancelotus, Conradus, Johannes de Lignano, Mutio Justino Politano, Berandler, Beutheus, Desdiguieres, &c. to whom we refer the reader, for that it is safe to follow the Acts of Parliament concerning the jurisdiction of this Court, and such presidents as have been before the Constable and Marshal in the Marshals Court within this Realm.

[Out of the Realm.] This is to be understood in any forain part beyond the Seas, In partibus exteris & transmarinis. For upon the Sea the Admiral hath jurisdiction, which Admiral (our English Neptune) cannot meddle with any thing done beyond the Seas upon the Land, and the Constable and Marshal have no consuance of any thing done upon the Sea.

26 H. 8. cap. 13.
35 H. 8. cap. 2.
5 E. 6. cap. 11.

Where by these Acts it is provided, That all treasons, misprision of treasons, or concealment of treasons committed out of this Realm of England, should be inquired of, heard and determined in the Kings Bench by good and lawful men of the same Shire, where the said Bench shall sit, or else before such Commissioners and in such Shire, as should be assigned by the Kings Commission by good and lawful men of the same Shire, in like manner and form to all intents and purposes as if such treasons, &c. had been done within the same, &c. None of these Acts doth take away the jurisdiction of the Constable and Marshal, where one accuseth another of High Treason done out of the Realm: for of such an accusation of one against another of any High Treason done out of the Realm the Constable and Marshal should have consuance thereof: because High Treason is not triable by Jury according to the course of the Common Laws of the Realm in that case for want of proof, as by all the presidents aforesaid it appeareth. Neither doth the said Act of 35 H. 8. or 5 E. 6. take away the Statute of 28 H. 8. cap. 15. for trial of treasons done upon the Sea albeit they be done out of the Realm. See hereafter Cap. 23. and the Third part of the Institutes, Cap. of Piracy, p. 111, & 112. and there was no doubt concealment of the trial of them. See the preamble of the Statute of 35 H. 8. and of 5 E. 6.

* Vid. Reg. 129.
F.N.B. 114. b.
Note remedy by
the Common Law
for wrong done
beyond the Sea.

* If any Merchant English be spoiled, or his goods taken from him beyond Sea by any Merchants strangers, and the English Merchant cannot upon suit attain

attain to Justice there, he shall have upon testimony thereof a Writ out of the Chancery to arrest the Merchants strangers if they come into England, or their goods, &c. until they be satisfied. See hereafter the Chapter of Admiralty.

Before this Act at a Parliament holden in the 8 year of R. 2: It was enacted, that no plea which should concern the Common Law should be tried before the Constable and the Marshal. Rot.Par. 8 R.2. nu.31. not printed

No addition either of persons or of jurisdiction can be added to this Court, unless it be by Act of Parliament, * for ancient Courts ought to be exercised according to the ancient and right institution, Rot.Par. 5 R.2. nu.39. Bennet Wilmots case. 6 H.7.5. Simile. * Regul. 6 H.7. 4:5.

In the Appeal aforesaid between Upton and Down in 8 H. 6. after battel joyned, the Kings Writ out of the Court of Chancery issued to the Sheriffs of London, as we find it entred and recorded in the great booke of the Abby of Bury fo.87. as followeth.

Rex Vic' London salutem: Præcipimus vobis firmiter injungentes quod quasdam listas & barras de meremio fortes & satis sufficientes pro quodam Duello inter Johannem Upton Appellantem & Johannem Down Defendentem, secundum legem Armorum die Luna prox' futur' apud West-smithfield in suburb' Civitatis prædictæ Deo dante perficiend' contra diem prædictum nostris sumptibus & expensis erigi, construi, & fieri fac' in omnibus prout in ultimo duello ibidem fact'o fact' fuerunt, & quod terra infra listas prædict' cum sabulo sufficiente & equalit' cooperiatur, Ita quod aliqui lapides grandes aut arena infra easdem listas minime inveniantur quovismodo: Et de omnibus & singulis pecuniarum summis quas circa præmissa applicaveritis, nos vobis in compoto vestro ad Scaccarium nostrum per præsens mandatum nostrum, debitam allocationem habere faciemus, &c.

Breve Vic' London pro listis & barris, &c. pro duello fac' Lex Armorum. Pro duello, &c. See the Articles set down by Tho. of Woodstock Duke of Glouc' Constable of England, about the beginning of the Reign of R.2.

By this Writ we observe four things. 1. That Sheriffs ought to make the lists, &c. 2. The manner how they are to make them. 3. That they ought to make them by the Kings Writ. 4. That they are to be made at the Kings charges. See modo fac' duellum coram rege.

By the Statute of 1 H.4. all Appeals of things done within the Realm shall be tried and determined by the good Laws of the Realm, &c. And that all Appeals made of things done out of the Realm shall be tried and determined before the Constable and Marshal of England for the time being, and that no Appeal be pursued in Parliament. 1 H.4. cap.14.

They proceed according to the customs and usages of that Court, and in cases omitted, according to the Civil Law, secundum legem Armorum. And therefore upon Attainders before the Constable and Marshal of England for the time being, no Land is forfeited, or corruption of blood wrought. Rot.Par. 11 H.4. nu.24. a 13 H.4. fo.45. q By the Civil Law, &c. * 37 H.6. fo.3. Forrele' cap.32. fo.38.

For Records, Book-cases, and other Authorities in Law as well for the exposition of the said Statutes, as for the jurisdiction and proceedings of this Court, see the First part of the Institutes, Sect. 102. and 745. and peruse the Authorities there cited. See also the petition of Right, 3 Car. cap.1.

It is to be observed that after sentence pronounced in this Court of Chivalry in case of Arms the party grieved may appeal to the King, whereof you may read a notable Record, Rot.Par. 13 R.2. parte 3. Note also a special Roll, An. 14 R.2. intituled Rot. process' in curia militari in causa Armorum, Int' Ric' le Scroop Chivalier, & Robertum Grovener Chivalier.

And for this cause (amongst others) the Heralds are Attendants upon this Court. Of these Heralds there be tres Reges, viz. Garter Rex Armorum, Cla-

Commission for arraying and mustering of men, which at this day is of force, and no other. Clergy exempt out of that. See also 14 E.3. Stat.2. nu.53. a Commission of Lieutenancy. See hereafter amongst the Ecclesiastical Courts. Tit. Appeals. Vid. Glover 82,83. c Saxonice *Ernhold*, i. honorem tenens, Latine *faciales*. 5 E.4.6.b. Pl.Com. 12.b. b 11 H.4. nu.24. All Statutes made touching the Courts of the Constable and Marshal and Admiral of England shall be observed. Vide Rot.Par. 5 H.4. nu.24. An Act not in Print touching a

2 Rot. Pat. 1 R. 3.
Rot. Pat. 2 & 3
Ph. & Mar. 18 July:
Their Colledge is
in the Parish of S.
Benner in Castle
Bainard Ward
granted to the cor-
poration of the
Heralds by Letters
Patents bearing
date 18 July 1555.
Anno 2 & 3 Ph. &
Mar.

b Ezek. 13. 8, 9.
Psalm 69. deleantur
de libro viventium.
& cum iustis non
scribantur. 1 Eldr.
ca. 2 62. Hi quæse-
runt Scripturam ge-
nealogia sue & non
invenierunt, & ejec-
ti sunt.

c Discharged of
Subsidies.

d Regist. 287. b.
F.N.B. 247. c.

* Or in the Kings
Bench or other
Court.

Nota, pro Barone.
Vid. 8 H. 6. 9, 10.
14 H. 6. 2. Lib 6.
fo. 53. b. le Countes
de Rutlands case.

10 E. 2. Camden
Brit. Rot. Cart.
23 H. 3. nu. 32. 34.
Almarick Earl of
Leic.
Math. Par. pag.
647.

* Inquisit' 21 H. 6.
Post mortem Wil-
helmi domini de
Eincourt.

Hil. anno 31 El.

renceux Rex Armorum ex parte Australi, Norroy Rex Armorum ex parte Bore-
ali, & sex alii Heraldi. These English Heralds are messengers of War and
Peace, skilful in descents, pedigrees, and Armoies; they marshal the solemn-
nities at Coronations, they manage combats before the Constable and Marshal,
and upon request they solemnize the Funerals of noble, honourable, reverend,
and worshipful Personages. a They were first incorporated by King R. 3. and
afterwards newly incorporated by King Philip and Queen Mary. Their learn-
ing and faithful dealing in descents and pedigrees upon just proof may be a
mean to quiet many controversies about the titles of Honours, Dignities, and
Inheritances.

b In the Prophet Ezekiel it is thus written: Dicit Dominus Deus, & erit ma-
nus mea super Prophetas, qui vident vana, & divinant mendacium: in concilio
populi mei non erunt, & in Scriptura domus Israel non scribentur.

Upon these latter words Divines do hold, Quod mos erat in Israel, quod una-
quæque familia genealogiam ejus scriberet, in qua dignoscebatur quilibet de qua
tribu erat, & de qua familia, & quæ hæreditas ejus esse deberet, & ille qui penitus
destrueretur non scriberetur.

c These Heralds are discharged of Subsidies, Tolls, and other charges of the
Commonwealth, by Letters Patents of E. 6. Anno 3. of his Reign.

d & the First part of the Institutes for degrees, and creations of Nobility, and
trial thereof, Sect. 9. fo. 16. & Sect. 95. fo. 69. whereunto you may add a notable
Writ in d the Register, when a Baron, or any higher degree of Nobility is
sued in the * Court of Common-pleas, and proces awarded against him by Ca-
pias or Exigent, then he may sue out this Writ.

Rex Justiciariis suis de Banco Salutem. Mandamus vobis, quod si
G. T. miles coram vobis ad sectam alicujus per actionem personalem impla-
citatus existit, talem processum & non alium versus ipsum in actione præ-
dicta fieri faciatis, qual' versus Dominos, Magnates, Comites sive Barones
regni nostri Angliæ qui ad Parlamentum nostrum de summonitione nostra
venire debent aut eorum aliquem secundum legem & consuetudinem regni
nostri Angliæ fuerit faciend', quia prædict' G. T. unum Baronum regni
prædict' ad Parliamenta nostra de summonitione regia venientium re-
cordari, &c.

The Barony of Edmond de Eincourt commonly Deincourt of Langley in
Lincolnshire, originally created by Writ, had long continued in his Sirname,
and having no issue male, desirous that his Sirname, Arms, and Barony, all
which he held in fee simple might continue, by humble suit importuned King
E. 2. for that he conceived, Quod cognomen suum & arma post mortem suam
deherentur, & corditer affectabat ut post mortem ejus in memoria haberentur, ut
de maneriis & armis suis feoffaret quemcunque voluerit: and in the end he ob-
tained his suit by the Kings Letters Patents under the Great Seal, and af-
terwards about 19 E. 2. he assigned according to the Kings grant his Sirname,
Arms, and Possessions. For we find in the close Rolls that the said Edmond
Baron of Eincourt sat in Parliament until and in 18 E. 2. and that after
his decease his Assignée sat in Parliament in 1 E. 3. by the name of William
de Eincourt, and in his heirs males the Dignity, Sirname and Possessions
continued * until 21 H. 6. and then his heir male, together with the name and
dignity ceased.

And I did hear the Baron of Burghley Lord Treasurer Deputy to the Earl
of Shrewsbury then Earl Marshal of England, in hearing of the cause by the
Queens commandment between Edward Nevil and Lady Mary Vane Daughter
and Heir of Henry Lord of Aburgavenny for the right of the Barony of Abur-
gavenny, vouch a Record in the Reign of E. 4. That the Lord Hoc, who bare for
his Ensigns of Honour quarterly Silver and Sable, having no issue male, by his
decease

died under his seal granted his name, Arms and Dignity over, but having not the Kings Licence and Warrant, the same was in Parliament adjudged to be void.

Our Heralds are constituted by Letters Patents, and have many ceremonies done unto them at their creation, but those ceremonies are not of the essence of their office, but the Letters Patents only: and so it was adjudged in the Kings Bench in the Reign of Queen Eliz. in the case of Dethick King of Arms. But thus much of Heralds upon this occasion shall suffice; and now let us return to our Constable and Marshal.

In ancient Laws before the Conquest, you shall read De Herefochiis or Here-

togiis, i. ductoribus exercitus, ab hepe exercitus & *toech* ducere.

Herefochius agreeth with either of these great Officers, Constabularius or Mar-

riscallus: Isti vero eligebantur per commune concilium pro communi utilitate regni per provincias & patricos in pleno Folkmote.

This office of the Constable of England was afterwards of inheritance by the tenure of the Mannors of Harlefeld, Newman, and Whitenhurst by Grand Serjeanty, in the line of the Bohuns Earls of Hereford and Essex, and afterwards of right in the line of the Staffords and Dukes of Buckingham as heirs general to them: at the last by the opinion of * all the Judges it was lawfully descended to Edward Duke of Buckingham, who was attainted of Treason, in Anno 13 H. 8. whereby this office became forfeited to the Crown, and since that time both in respect of the amplitude of the Authority both in War and Peace, and of the charge, it was never granted to any subject, but now of late hac vice.

For the office of the Earl Marshal, see the First part of the Institutes, Sect. 102. & 135.

The effect of the grant of this Office of Constable of England is in very few words, viz. Officium Constabularii Angliæ una cum omnibus feodis, proficiis, commoditatibus, & emolumentis quibuscunque officio prædicto qualitercunque pertinentibus, & ab antiquo debitis & consuetis. And by no means we are to follow the irregular president of the grant thereof by King E. 4. in the seventh year of his Reign to Richard Wideville Earl Rivers and Lord of Grafton and De la mote for his Life: which Patent you shall find Rot. Pat. Anno 7 E. 4. part 1. and is directly against the Common Law and the Statutes concerning the Jurisdiction of this Office; and therein to overreach all the good and wholesome Laws made for the declaration of the Jurisdiction of this great Office, power was given to the Earl Rivers to have consulance in case of High Treason, and other causes and affairs, Quæ in Curia Constabularii Angliæ ab antiquo, viz. Domini Guilielmi Conquestoris progenitoris regis, seu aliquo tempore citra, tractari, audiri, examinari & decidi consueverunt, seu de jure debuerunt sive debent, & diversa alia perperam. And therefore by no means the same or the like is to be drawn into example.

For grants of this great Office of Constable of England, see the presidents, and by that which hath been said choose the best. Rot. Pat. 1 H. 4. parte 1. Henrico comiti North. pro vita. Rot. Pat. 4 H. 4. parte 2. Johanni filio regis, ad placitum. Rot. Parl. 1 H. 6. nu. 23. Duci Glouc' ad placitum. Rot. Pat. 1 H. 6. parte 2. Johanni Duci Bedford pro vita. Rot. Pat. 8 H. 6. parte 1. Richardo Duci Eborum in absentia Johannis Ducis Bedford. Rot. Pat. 25 H. 6. parte 1. Johanni Vicecomi de bello monte. Rot. Pat. 28 H. 6. parte 2. m. 22. Henrico Comi Northumbr. ad placitum. Rot. Pat. 29 H. 6. parte 1. Edmundo Duci Somerset. ad placitum. Rot. Pat. 1 E. 4. parte 3. m. 188. Johanni Comi Wigorn'. Rot. Pat. 7 E. 4. parte 1. Johanni domino Tiptoft. Rot. Pat. 7 E. 4. Ubi supra Richardo Corn' Rivers. Pat. 8 E. 4. parte 1. Pat. 9 E. 4. Georgio Duci Clarenc'. Pat. 9 E. 4. parte 2. Richardo Duci Gloc'. Pat. 10 E. 4. parte * Johanni Tiptoft Comiti Wigorn. pro vita. Pat. 16 E. 4. parte 1. Richardo Duci Eborum. Henricus Stafford Dux Buckingham jure hæreditario. Pat. 1 R. 2. Thomas Dominus Stanley. Edwardus Dux Buck' jure hæreditario.

Int' leges Edwardi regis.

Lamb. 136. Hovenden Annal. Cap. 35. De Herefochiis.

Of ancient time eligible.

Lambard ubi sup.

Hovenden. ubi sup.

* See 11 El. Dier 285. so resolved in 6 H. 8.

Hic omnium immensissimus: but the debts of cruelty are never unpaid, respice finem.

This great office hath been usually granted, as by the presidents aforesaid appeareth, Exercendum per se vel per sufficientes deputatos suos, seu per sufficientem deputatum suum.

There is also an Office of Subconstabularius granted to Thomas Kent Doctor of Laws. Pat. 23 H.6 parte 2. Simile Pat. 22 E.4 m.1.

There is also Clericus Constabularie Angliæ, & Promotor causarum & negotiorum regiam majestatem tangen'. This Office was granted to Thomas Appulton with a fee of five marks, Pat. 8 E.4 parte 1.

Concerning the grants of the Office of Earl Marshal of England, for this Office ever passed by the grants of the King, and never belonged to any Subject by reason of tenure, as the Stewardship and Constableness of England sometime did.

Rot. Cart. 20 R. 2.
m. 1. n. 3.

* This is the first
stile that ever
came in any Pa-
tent.

Rot. Cart. 9 R. 2.
m. 17.

Rex, &c. Sciatis quod cum nos nuper de gratia nostra speciali concefferimus dilecto consanguineo nostro Thomæ Comiti Nottingham Officium Mareschalli Angliæ, habendum ad totam vitam suam: Nos jam de ulteriori gratia nostra concessimus præfato consanguineo nostro officium prædictum * una cum nomine & honore Comitum Mareschalli. Habendum sibi & hæredibus suis masculis de corpore suo exeuntibus cum omnibus feodis, proficuis & pertinentiis quibuscunque dicto officio qualitercunque spectantibus imperpetuum. Hiis testibus, &c. Dat 12 Junii Anno Regni sui 20. This Charter of creation is confirmed by Act of Parliament. The former grant before recited, yet shorter then this, was made anno 9 R. 2.

For other grants of this Office in Rot. Cartarum, Pat. & Parl. See Rot. Cart. 1 Johannis parte 2. nu. 85. Rot. Cart. 9 E. 2. nu. 32.

Vide Rot. Pat. { 1 H. 3. m. 14. 16.
22 R. 2. parte 1. m. 12.
1 H. 4. parte 1. & 5. m. 6.
1 R. 3. parte 1. m. 12.
1 H. 7. parte 3.
2 H. 8. parte 2.
25 H. 8. parte 2.
1 E. 6. parte 1. m. 19. & 22.
19 Ja. parte 13. nu. 5.
3 H. 6. m. 181.
1 Maria nu. 34.
1 R. 2. m. 4. & 3:
20 R. 2. nu. 33.
Vide Rot. Parl. { Parl. 21 E. 1. Rot. 1. Quæ pertinent ad officium Comitum Mareschalli, &c.

Pat. 22 E. 4. m. 2.

There was also Vicemareschallus, which office was granted to Tho. Grey hac vice.

Vid. Lib. nigr' de Scaccario, concerning the offices of the Constable and Marshal, & Lib. rubro fo. 36.

See also the Marshal of England, Fleta lib. 2. cap. 4, 5. and Britton in principio libri

See Mich. 13 E. 2. in Scaccario pro feodis Constabularii Angliæ.

Hil. 5 E. 3. in Scaccario Certificatio fact' Regi pro officio Mareschalli. 1 E. 3. fo. 16. 2 E. 3. fo. 12. 48 E. 3. 3. Rot. Parl. 2 R. 2. nu. 47. 5 R. 2. Tit. Trial 54. Rot. Par. 5 H. 4. nu. 39. Kelwey 172. Stanf. Pl. Cor. 65. Fortescue Ca. 32. fo. 38. 5 Mar. Brit. tit. batel 15.

Herelita signifieth a Soldier hired and departing without Licence, derived of Here, exercitus, & sliten, to depart.

If any Soldier have covenanted to serve the King in his War, and appear not at the time and place appointed, there lyeth by the Common Law an original Writ of Capias conductos ad proficiscendum, directed to two of the Knights Serjeants

Regist. fo. 191. a.
& Par. 5 E. 3.
m. 18.

Sherseants at Arms to arrest and take him wheresoever he may be found, and to bring him Coram consilio nostro with a clause of assistance: but of this matter see the Third part of the Institutes, Cap. [Soldiers that depart, &c.] See 3. Car. the petition of Right concerning Partial Law, and the Commission to Lieutenants, &c.

To conclude with some short touch concerning right of war. Si quando accesseris ad expugnandā civitatē, offeres ei primū pacem: and see there many things concerning right of war. Quis Rex iturus committere bellum adversus alium Regem, non sedens prius cogitat si possit cum decem millibus occurrere ei qui cum viginti millibus venit ad se, alioquin illo adhuc longe agente legationem mittens rogat ea quæ pacis sunt. Deut. 20. 10. &c. Luc. 14. 31.

Haud facile vincitur qui de suis & adversarii copiis vere poterit judicare. Qui colloquium offert, semper pavescit, he that offereth parly is ever afraid. Nulla sunt meliora consilia quam quæ ignoraverit adversarius antequam facias. Tacitus. Vegetius de re militari.

Nullum bellum est justum, nisi aut pro rebus petitis geratur, aut ante denunciatum sit, & indictum. Cicero Offic.

Jure gentium non licet indictas inimicitias exercere & bellum gerere, priusquam ille à quo injuria sit orsa moneatur illicitam injuriam rescire, & ab injuria abstinere. Camden.

Justum autem bellum est quod tria hæc habet, Authorem, Causam, Finem. Lipsius.

Semper in prælio hiis maximum periculum, qui maxime timent. Salust.

Longa belli præparatio celerem dat victoriam. Veget. & Seneca.

Ideo suscipienda sunt bella, ut sine injuria in pace vivatur. Cicero ubi sup.

In republica maxime conservanda sunt jura belli. Arist. 10.

* Olim veteri lege armorum cives & burgenses militiam tractare prohibiti fuerunt. * Vid. 24 E. 3. Tit. Coron.

We touch Vegetius for his own honor and worthiness, and for that Fortescue fol. 70. b. citeth him.

C A P. XVIII.

The Court of the Marshalsea.

¶ *The name.*
 1 part of the Institutes, §. 102. & 135.

¶ *The Antiquity and honor.*

4 H. 6. 8. L. 5 E. 4. 229.

¶ *Wherefore it is called the Court of the Marshalsea.*

¶ *The Jurisdiction of this Court is original and ordinary.*

4 H. 6. 1.

Hil. 20 R. 2. Corā

Rege Rot. 58. Mid.

W. 1. cap. 26. feces.

Rot. Par. 17 E. 3. nu. 31.

For the derivation of Mareschallus & Mareschalcia, see before in the next preceding Chapter of the Court of the Constable and Marshal, that they be derived from two Saxon words which we conceive tendeth much for the proof of the antiquity and honor of our Nation, seeing other Nations have the same Officers and Offices; and in respect their name is derived from the language of our Ancestors, it is like they took the same from us.

Albeit in this Court the Steward and Marshal of the household are Judges, and the Steward hath the precedence, yet the Court is called the Court of Marshalsea for three causes. First, He is not only a Judge, but seeth that execution (which is the life of the Law) be done. Secondly, His office is in force both in time of peace, and in time of war. Thirdly, Though the Constable hath the precedence of the Marshal of England, yet the Court holden before them is called the Marshal Court, for the causes aforesaid. See before in the Chapter of the Constable and Marshal, see also Rot. Par. anno 8 H. 4. nu. 82. that the Court of the Marshal can hold no plea but such as were holden in the Reign of E. 1.

For the jurisdiction of this Court, and within what precinct, see in my Reports, Lib. 10. fol. 68, 69. &c. Le case del Marshalsea. Lib. 6. fol. 20, 21. Michelbornes case. 7 H. 4. 15. in Calvins case. Lib. 4. fol. 46, 47. Swifts case. See Parl. 30 E. 1. Rot. 2. All inquisitions concerning any Citizen of London shall be taken in London.

Pertinet ad Mareschallum Cur' hic venire fac' juratores super felones captos cum manuere in Aula Regis.

This Court hath his foundation from the Common Law of England.

This Marshal by the Statute of W. 1. can take no fee for doing of his office, but only of the King, but such fees as latter Acts of Parliament have given him, he may take. See the Third part of the Institutes, Cap. Exortion.

For the fees of the Marshal of the Kings house, and of staffe bearers, and servants of bills, see the Statute of 2 H. 4. Cap. 23.

To conclude this Chapter with an Act of Parliament not in print. It is enacted that every person arrested into the Marshalsea, may tell his own tale, and that the Officers do not pass the Werge. See Par. 50 E. 3. nu. 91. 162.

CAP. XIX.

The Counting-house of the Kings Household.
Domus Compotus Hospitii Regis.

IT is commonly called the Exchequer, in respect of the Green cloth upon the Table, whereat the honorable Officers hereafter mentioned do sit, viz. the Lord Steward, the Treasurer of the Kings House, the Controller of the Kings house, the Master of the Household, the Cofferer, and two Clerks Controllers continually sitting in this Counting-house for these purposes. First, For daily taking the accounts for all expences of the said household. Secondly, For making of provisions for the said household, according to the Laws and Statutes of the Realm. Thirdly, For making of payment for the same accordingly. Fourthly, For the good government of the Kings servants of household. Fifthly, The Cofferer is to pay the wages to the Kings servants beneath the stairs, and the Lord Chamberlain above the stairs of the Kings household. Vide 39 El. c. 7. and he is to account in the Exchequer for about 40000 l.

33 H.8. cap. 12;

Sic Fleta de officio Thesaurarii Hospitii Regis, &c. Habet enim Rex alios clericos in hospitio suo, ut Thesaurar Garderobæ suæ quæ est locus Clericis tantum assignatus, quæ in Francia Camera Clericorum appellatur. Huic enim Thesaurario cur expens' Regis & familiæ suæ committit, q̄ cum Clerico provido sibi associato pro Controlatore recordum habet ut in hiis q̄ officium suum contingunt.

Fleta lib. 2. cap. 13
Thesaurarius Garderobæ.

C Officium Thef. Garderobæ est pecuniam, jocalia exennia Regi facta recipere & recepta regisque secreta custodire, & de receptis expens' facere rationabiles, expensarumque particulas inbreviare, & de particulis comp' reddere ad Scaccarium singulis annis in festo Sanctæ Margaretæ absque sacro præstando, eo quod de consilio Regis est juratus, Et unde primo debet distincte & aperte comp reddere de omnibus recept' separatim per se in uno rotulo. In alio autem rotulo de expens' quotidianis de quibus Sen audiverit comp, simul cum Thef. & consocio suo. Item de necessariis expens' in quibus emptiones equorum, cariagia & plura alia continent. Item de donis. Item de oblationibus & eleemosynis. Item de vadiis militum. Item de vadiis balistar. Item de feod' forinfecis. Item de præstit & accommodat.

Compotum reddere.

De consilio Regis juratus.
Modus compoti.

C Item de expens' Garderobæ in quib' emptiones pannorum, pelure, cere, sp̄erū tele, & hujusmodi comprehenduntur. Item de jocalibus. Item de expens' forinfecis, in quibus diversi onerant in compot reddend'. Item de Nunciis. Item de Falconar.

C Thef. autem memoratus convenire debet singulis noctibus Sen hospitii, Camerar Controlatorem & clericum ejus, Coffrarium, Mar aulæ & hostiar milites, Mar servient & duos hostiar aulæ & hostiar cameræ servientes, assessorem ferculorum, pincernam, panetr pistorem & clericum eorundem officiorum, q̄ de expens' dietæ, viz. panis, vini, & cervis. pichiorum, ciphorum, salis, fructus, casei & hujusmodi respondebit.

Convenire singulis noctibus. Coffrarius.

C Item duos magistros Cocorum, lardenar, poletar, scutelar, falsar, & clericum coquinæ qui de eisdem officiis pro omnibus in eorum præsentia de expens' illius dietæ reddit rationem, quorum omnium præsentia necessaria est. Item Eleemosynar, janitor servientem ad custodiam summar & carectarum deputatum & clericum de Marefalcia cum Marefcall' fractore equorum, qui quidem clericus de expens' feni & aven' litere fracture equorū & harnesie pro equis & carectis ac de vadiis servient scutiferarum clericorum & garc' respondebit, cujus interest scire tam de hiis qui de novo erunt admissi ad vad' Regis, quam de vagantibus & in hiis vadia minuere & augere. Vadia autem absentibus sine speciali præcepto Regis nisi obsequio reg' fuerint minime concedunt, præsentia autem Coronatoris

Magistri Cocorum;
Clericus Coquinæ.

Regis

Regis necessario erit in pleno compoto, compoti auditores super foro frumenti & avene instruet & edocent qualiter proclamant in eisdem partibus per quod melius scire possint quot panes obolati fieri debent de quart frumenti, quibus omnibus congregatis audire debet expens. & rationabilem compot illius diete.

¶ Marefchalli autem de supervenientibus debent inferiori Mares testimonium perhibere. Hostiarius miles hostiariis aliis de numero ferculorum lardepas, coco, camerar, hostiario camer Regis, & sic quibus alii, & sic audiat compotis de tota dieta.

And then followeth a description of the duties of the several officers above said, worthy the reading.

The Cofferer is in Fleta called Coffarius of the Coffer: because he should have money in his Coffer to pay wages, &c. as is aforesaid. It is enacted by the Statute of 28 E. 1. cap. 2: That all Purveyors shall account in the * household, or in the Wardrobe, Rot. Par. 28 E. 3. nu. 34. no Purveyor arrested shall be brought before the Council, &c. but take his remedy by the Common Law. See the Third part of the Institutes, cap. Purveyors.

* See the Statutes concerning Purveyors, Anno 36 E. 3. cap. 2, 3, 4, 5, 6, &c. But observe that there is left out of the print the pain on the Steward, Treasurer, Controller, and other Officers of the household at the Kings will, for not executing the Statute: which omission hath made those of the Chancery the bolder.

At that Parliament it was also enacted, that the Kings carriages should be made in as easie manner as might be, and that in the Summer, and other times convenient, as in August (which is also left out of the print.) For the Kings Carriages see Mag. Cart. cap. 21. and the exposition upon the same in the Second part of the Institutes.

For the Wardrobe, Vide 15 E. 2. Rot. per se. 1 E. 4. c. 1. Clerk of the Wardrobe, Rot. Parl. 7 H. 7. the expences of the Kings household and Wardrobe: 1 H. 8. an Act concerning the great Wardrobe. 3 H. 8. the assignment for the Kings Wardrobe. 39 Eliz. cap. 7. Master of the Wardrobe, whose office is accountable in the Exchequer. See W. 1. cap. 44. what issues the Kings Justices are to estreat into the Wardrobe: more of the Wardrobe, Rot. Claus. 33 E. 1. m. 3. Rot. liberationum, 11 E. 2. m. 4. To conclude, See Rot. Claus. 18 E. 4. m. 13. where it appeareth that Letters and Writings concerning matters of State, which were not fit to be made vulgar, were inrolled in the Wardrobe, and not in the Chancery, as leagues were and ought to be, as it appeareth in 19 E. 4. 6. And thus much of the Wardrobe being mentioned in Fleta.

The Officers of the Counting-house never held pleas of any thing.

Artic. sup. Cart. cap. 2.

* Countinghouse having the Green-cloth. Rot. Parl. 28 E. 3. nu. 34.

* 36. E. 3. ca. 2, 3, 4, &c.

Rot. Par. 36 E. 3. nu. 18.

Vid. infra cap. 26.

CAP. XX.

*The Court of the Lord Steward, Treasurer, and Contr-
troller of the Kings household, concerning Felony by
compassing or conspiracy to kill the King, or any
Lord or other of the Kings Councel, &c.*

They have Jurisdiction by Act of Parliament to enquire, hear, and deter-
mine the said offence, as particularly and at large appeareth in the Third
part of the Institutes, ca. Felony, by compassing, or conspiracy to kill the King, &c.

3 H. 7. cap. 14.
3 part of the In-
stitutes cap. Fe-
lony by compas-
sing or conspira-
cy to kill the King
fol. 67.

CAP. XXI.

*The Court of the Lord Steward of the Kings House,
or in his absence of the Treasurer, and Contr-
troller of the Kings House, and Steward of the Mar-
shalse.*

They have Jurisdiction by Act of Parliament to enquire of, hear, and de-
termine all Treasons, Disposition of Treasons, Murders, Manslaughters,
Bloodshed, and other malicious strikings, whereby blood shall be shed in any
of the Palaces and Houses of the King, or in any other House where the King
in his Royal Person shall be abiding. And by that Act the * limits and bounds
of the Kings Palaces or Houses, or the House where the Royal Person is abid-
ding, are particularly and expressly set forth and described. In this and like cases
we refer you to the Statute it self, for Compendia sunt dispendia.

33 H. 8. cap. 12.
See the Statute
for the trial and
manner of pro-
ceeding.
Rastall pl. 124.
See the third part
of the Institutes,
cap. Misprision.
fol. 229.
* Vide 28 ca. 12.

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CAP.

CAP. XXII.

*The Court of the Admiralty proceeding according to the Civil Law.**Articuli Admiralitatis.**Articuli Admiralitatis.*

The Articles of the Admiralty.

¶ The proces and proceedings in this Court are in the name of the Lord Admiral.

The complaint of the Lord Admiral of England to the Kings most Excellent Majesty against the Judges of the Realm, concerning Prohibitions granted to the Court of the Admiralty *11 die Febr. ultimo die Termini Hillarii, Anno 8 Jac. Regis*: The effect of which complaint was after by his Majesties commandment set down in Articles by Doctor *Dun* Judge of the Admiralty; which are as followeth, with answers to the same by the Judges of the Realm: which they afterwards confirmed by three kinds of Authorities in Law. 1. By Acts of Parliament. 2. By Judgments and judicial proceedings: and lastly, by Book cases.

The title of the Complaint.

Certain grievances whereof the Lord Admiral and his Officers of the Admiralty do especially complain, and desire redress.

1 *Objection.*

That whereas the consuance of all contracts and other things done upon the Sea belongeth to the Admiral Jurisdiction, the same are made triable at the Common Law, by supposing the same to have been done in Cheapside, and such places.

The Answer.

By the Laws of this Realm the Court of the Admiral hath no consuance, power, or jurisdiction of any manner of contract, plea, or querelle within any County of the Realm, either upon the Land or the Water: but every such contract, plea, or querelle, and all other things rising within any County of the Realm, either upon the Land or the Water, and also Wreck of the Sea ought to be tried, determined, discussed, and remedied by the Laws of the Land, and not before, or by the Admiral nor his Lieutenant in any manner. So as it is not material whether the place be upon the water infra fluxum & refluxum aquæ: but whether it be upon any water within any County. Wherefore we acknowledge that of contracts, pleas, and querels made upon the Sea, or any part thereof which is not within any County (from whence no trial can be had by twelve men) the Admiral hath, and ought to have jurisdiction. And no president can be shewed that any Prohibition hath been granted for any contract, plea, or querelle concerning any marine cause made or done upon the Sea, taking that only to be the Sea wherein the Admiral hath jurisdiction, which is before by Law described to be out of any County. See more of this matter in the Answer to the sixth Article.

The description and limitation of the (Sea) wherein the Lord Admiral hath Jurisdiction.

2 *Objection.*

When Actions are brought in the Admiralty upon bargains and contracts made beyond the Seas, wherein the Common Law cannot administer Justice, yet in these cases Prohibitions are awarded against the Admiral Court.

The Answer.

See hereafter in the proofs by Judgments and Judicial presidents

Bargains or Contracts made beyond the Seas wherein the Common Law cannot administer Justice (which is the effect of this Article) do belong to the Constable and Marshal; for the Jurisdiction of the Admiral is wholly confined to the Sea, which is out of any County. But if any Indenture, Bond, or other Specialty, or any contract be made beyond Sea for doing of any act or payment of any money within this Realm, or otherwise, wherein the Common Law can administer

minister Justice, and give ordinary remedy: In these cases neither the Constable and Marshal, nor the Court of the Admiralty hath any Jurisdiction. And therefore when this Court of the Admiralty hath dealt therewith in derogation of the Common Law, we find that Prohibitions have been granted, as by Law they ought.

Whereas time out of mind the Admiral Court hath used to take stipulations for appearance and performance of the Acts and Judgments of the same Court: It is now affirmed by the Judges of the Common Law that the Admiral Court is no Court of Record, and therefore not able to take such stipulations: and hereupon Prohibitions are granted to the utter overthrow of that Jurisdiction. 3 Objection.

The Court of the Admiralty proceeding by the Civil Law is no Court of Record, and therefore cannot take any such Recognisance as a Court of Record may do. And for taking of Recognisances against the Laws of the Realm, we find that Prohibitions have been granted, as by Law they ought. And if an erroneous sentence be given in that Court, no Writ of Error, but an Appeal before certain Delegates doth lye, as it appeareth by the Statute of 8 Eliz. Reginae, 8 Eliz. cap. 5. which proveth that it is no Court of Record. The Answer.

That Charter-parties made only to be performed upon the Seas, are daily withdrawn from that Court by Prohibitions. 4 Objection.

If the Charter-party be made within any City, Port, Town, or County of this Realm, although it be to be performed either upon the Seas, or beyond the Seas, yet is the same to be tried and determined by the ordinary course of the Common Law, and not in the Court of the Admiralty. And therefore when that Court hath incroached upon the Common Law in that case, the Judge of the Admiralty and party suing there have been prohibited, and oftentimes the party condemned in great and grievous damages by the Laws of the Realm. The Answer.

That the clause of Non obstant Statuto, which hath foundation in his Majesties Prerogative, and is current in all other grants, yet in the Lord Admirals Patent is said to be of no force to warrant the determination of the causes committed to him in his Lordships Patent, and so rejected by the Judges of the Common Law. 5 Objection.

Without all question the Statutes of 13 R. 2. cap. 3. 15 R. 2. cap. 5. and 2 H. 4. cap. 11. being Statutes declaring the Jurisdiction of the Court of the Admiral, and wherein all the subjects of the Realm have interest, cannot be dispensed with by any Non obstant, and therefore not worthy of any answer: but by colour thereof, the Court of the Admiralty hath contrary to those Acts of Parliament incroached upon the Jurisdiction of the Common Law to the intolerable grievance of the subjects, which hath oftentimes urged them to complain in your Majesties Courts of ordinary Justice at Westm. for their relief in that behalf. The Answer.

To the end that the Admiral Jurisdiction may receive all manner of impeachment and interruption, the Rivers beneath the first Bridges, where it ebberth and floweth, and the Ports and Creeks are by the Judges of the Common Law affirmed to be no part of the Seas, nor within the Admiral Jurisdiction: and thereupon Prohibitions are usually awarded upon actions depending in that Court, for Contracts and other things done in those places; notwithstanding that by use and practise time out of mind, the Admiral Court have had Jurisdiction within such Ports, Creeks, and Rivers. 6 Objection.

The like answer as to the first. And it is further added, that for the death of a man, and of mayhem (in those two cases only) done in great ships, being and hovering in the main Stream only beneath the points of the same Rivers nigh to the Sea, and no other place of the same Rivers, nor in other causes, but in those two only, the Admiral hath cognisance. But for all contracts, pleas, and querels made or done upon a River, Haven or Creek within any County of this Realm, the Admiral without question hath not any Jurisdiction, for then he should hold plea of things done within the body of the County, which are triable by verdict of twelve men, and merely determinable by the Common Law, and not within

within the Court of the Admiralty according to the Civil Law. For that were to change and alter the Laws of the Realm in those cases, and make those contracts, pleas and querels triable by the Common Laws of the Realm to be drawn ad aliud examen, and to be sentenced by the Judge of the Admiralty according to the Civil Laws. And how dangerous and penal it is for them to deal in these cases, it appeareth by judicial presidents of former ages. See the answer to the first Article.

The 7 Objection.

That the agreement made in Anno Domini 1573. between the Judges of the Kings Bench and the Court of the Admiralty for the more quiet and certain execution of Admiral Jurisdiction, is not observed as it ought to be.

The Answer.

The supposed agreement mentioned in this Article hath not as yet been delivered unto us, but having heard the same read over before his Majesty (out of a paper not subscribed with the hand of any Judge) we answer, that for so much thereof as differeth from these answers, it is against the Laws and Statutes of this Realm: and therefore the Judges of the Kings Bench never assented thereunto, as is pretended, neither doth the phrase thereof agree with the terms of the Laws of the Realm.

The 8 Objection.

Many other grievances there are, which in discussing of these former will easily appear worthy also of reformation.

The Answer.

This Article is so general, as no particular answer can be made thereunto, only that it appeareth by that which hath been said, that the Lord Admiral his Officers and Ministers principally by colour of the said void Non obstante, and for want of learned advice have unjustly incroached upon the Common Laws of this Realm, whereof the marvail is the less, for that the Lord Admiral, his Lieutenants, Officers, and Ministers have without all colour incroached and intruded upon a right and prerogative due to the Crown, in that they have seized, and converted to their own uses goods and chattels of infinite value taken by Pirates at Sea, and other goods and chattels which in no sort appertain unto his Lordship by his Letters Patents, wherein the said Non obstante is contained, and for the which he and his Officers remain accountable unto his Majesty. And they now wanting in this blessed time of peace causes appertaining to their natural Jurisdiction, they now incroach upon the Jurisdiction of the Common Law, lest they should sit idle and reap no profit. And if a greater number of prohibitions (as they affirm) hath been granted since the great benefit of this happy peace, then before in time of hostility, it moveth from their own incroachments upon the Jurisdiction of the Common Law. So as they do not only unjustly incroach, but complain also of the Judges of the Realm for doing of Justice in these cases.

Touching our proceedings in granting of prohibitions concerning any of the said Articles, two things are to be considered of. First, the matter; and secondly, the manner. For the matter nothing hath been done therein by your Majesties Courts at Westminster, but by good warrant of Law and former judicial president. And for the manner, we have granted none in the time of Vacation, nor in the Term time in any of our Chambers, nor in the Court in the Term time ex officio, but upon motion made in open Court by learned Counsel, and after a day prefixed, and warning given to the adverse party, and upon reading of the Libel in open Court, and hearing of the Counsel learned of such of the parties as were warned and did attend.

The said answers are proved and confirmed (as is aforesaid) by three kind of Authorities in Law. First, by Authority of the High Courts of Parliament. Secondly, by Judgments and judicial Presidents. Thirdly, by Book-cases, and the Authority of our Books.

¶ 1. By Acts of Parliament.
13 R. 2. cap. 5.

Concerning the Acts of Parliament: It is enacted by the Statute made in 13 R. 2. cap. 5. That the Admirals and their Deputies shall not meddle from henceforth with any thing done within the Realm of England, but only with things done upon the Sea, according to that which hath been duly used in the time of the Noble King Edward Grandfather of King R. 2. By which it is manifest, that

that the jurisdiction of the Court of Admiralty is only confined to things done upon the Sea, which the adverse party yielded, but claimeth by a colour of a Non obstante, &c. which is utterly void, as hath been said.

By the Statute of 15 R.2. cap.3. it is enacted and declared, That the Court of the Admiral hath no manner of consuance, power nor jurisdiction of any manner of contract, plea or querel, or of any other thing done or rising within the bodies of the Counties, either by Land or by Water, and also of wreck of the Sea, but all such manner of contracts, pleas, and querels, and all other things rising within the bodies of the Counties as well by Land as by Water, as is aforesaid, and also wreck of the Sea shall be tried, terminated, discussed, and remedied by the Laws of the Land, and not before, nor by the Admiral nor his Lieutenant in no manner. Nevertheless of the death of a man, and of a mayhem done in great Ships, being and hovering in the main stream of the great Rivers only beneath the points of the same Rivers, and in no other place of the same rivers, the Admiral shall have consuance. This latter clause giveth the Admiral further jurisdiction in case of death and mayhem, (with neither of which we ever medled) but in all other happening within the Thames, or in any other River, Port, or water, which are within any County of the Realm, (as all Rivers and Havens be, as hereafter shall manifestly appear) by express words of this Act of Parliament, the Admiral or his Deputy hath no jurisdiction at all. Wherein it is to be observed, how curious the makers of this Statute were to exclude the Admiral of all manner of jurisdiction within any water which lieth within any County of the Realm.

Nota, The Lord Admiral hath greater jurisdiction in case of the death of a man, and mayhem, than in other cases.

The Statute of 2 H.4. cap.11. enacteth, That the said Act of 13 R.2. cap.5. be firmly holden and kept, and put in due execution, and further at the prayer of the Commons that as touching a pain to be set upon the Admiral or his Lieutenant, that the Statute and Common Law shall be holden against them, and the party grieved shall recover his double damages. By which Act it appeareth, that the Statute of 13 R.2. is but an affirmation of the Common Law, as shall also manifestly appear hereafter.

Which three Acts cannot be dispensed withal by a Non obstante, as hath been said before, but remain in full force, and have been put in due execution in all ages.

This Statute of 27 Eliz. c.11. describeth particularly the limits of the Lord Admirals jurisdiction in these words. All and every such of the said offences before mentioned, as hereafter shall be done on the main Sea, or coasts of the Sea, being no part of the body of any County of this Realm, and without the precinct, jurisdiction and liberty of the Cinque Ports, and out of any Haven or Pier, shall be tried and determined before the Lord Admiral, &c. So as by the judgment of the whole Parliament the jurisdiction of the Lord Admiral is wholly confined to the main Sea, or Coasts of the Sea being no parcel of the body of any County of this Realm.

And by these four Acts of Parliament all the said objections that have been made, or can be made against the proceedings of the Kings Courts at Westminster (being grounded on the same) are fully answered. And we will conclude this first part with the saying of God himself. Almighty God (as he himself out of a whirlwind spake) hath shut up the Sea within certain dozes and bounds, Quis conclusit ostiis mare, quando erumpebat, quasi de vulva procedens: circumdedit illud terminis meis, & posui vectem & ostia, & dixi, Usque huc venies, & non procedes amplius, & hic confringes tumentes fluctus ejus.

Concerning the second kind of proof, viz. by Judgments and judicial presidents, every of them in all successions of ages in serie temporis, taking some in every age for many that might be cited.

Register Origin. fol.129. F.N.B. 114. If goods be taken from an English man in Spain beyond the Sea, and the party cannot obtain justice there, he shall have a writ to the Sheriff to arrest the body of the offenders, and to seise of their goods to the value: which proveth that the Admiral cannot hold plea thereof, for that

¶ 2. By Judgments and judicial presidents.

Regist. Origin. fol. 129. F. N. B. 114.

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the party hath remedy by the Common Law, and the Admirals power is only Super altum mare.

Hil. 6 H. 6.
Rot. 303. in Banc.

In Portu.

Hil. 6 H. 6. Rot. 303. in the Court of Common Pleas between John Burton Plaintiff, and Bartholomew Put Defendant, the case was this upon the said Statutes. The said Bartholomew sued the said John Burton in the Admiral Court before Thomas Duke of Exeter then Admiral of England, for that the said John Burton with force and arms the second day of September, an. 1 H. 6. thre Ships of the said Bartholomew with his prisoners and merchandizes to the value of 960 marks, 5 s. 5 d. ob. in the same Ships being, did take and carry away, supposing by his libel the same to be taken away, super altum mare, upon the high Sea. Although the taking aforesaid was infra corpus Comitatus in Bristow (the said Ships lying in the haven of Bristow) and not upon the high Sea, contrary to the form and effect of the said Statutes; the parties descended to an issue, which was found for the Plaintiff and damages assailed for the Plaintiff to 700 l. And it appeareth by the Record, that this being the first case that we can yet find that received judgment in the Court of Common Pleas upon the said Statutes, the same depended in advisement and deliberation eight Terms: and then the record saith, Et super hoc audito tam recordo quam veredicto predicto, & per Curiam plenius intellect: Consideratum est quod præd' Johannes Burton recuperet vers' præfat' Bartholomæum damna sua prædicta occasione attachamenti, prosecutionis, & vexationis, quam misarum & custagiorum ad septingentas libras per Juratores præd' superius assess' in duplum per statutum, &c. quæ damna in duplo se extendunt ad mille & 400 l. & idem Barth. poenam decem librarum erga Dominum Regem nunc per idem Statut' incurrat, & capiatur, & querens remittit 400 l. Upon which Judgment four things are to be observed. First, That it is contemporanea expositio, being made within twenty years of the making of one of the said Statutes, and contemporanea expositio est optima. Secondly, That albeit the said thre Ships with the prisoners and merchandizes in them lay in the haven, inter fluxum & refluxum aquæ, and infra primos pontes, yet that the haven is infra corpus Comitatus, and that for taking of the Ships and the prisoners, and merchandizes in the same no suit ought to be in the Admiral Court, but at the Common Law. Thirdly, That the Court of Admiralty hath no jurisdiction but super altum mare, which is not within any County, for the Record saith, that the said thre Ships with the prisoners and merchandize in the same, did lie infra Comitatu Britoliæ, & non super altum mare, as the Plaintiff in the Admiral Court supposed the same to be. Lastly, That judgment so solemnly, and with such advisement given, if it were alone, were sufficient to give full satisfaction in this point: for Judicium est tanquam juris dictum, and Judicium pro veritate accipitur. But to proceed.

Pasch. 12 H. 6.
Rot. 124. in Banc.

In Portu.

Pasch. 12 H. 6. Rot. 124. a like action brought by Robert Cupper upon the said Statutes in the Court of Common Pleas (reciting the said thre Statutes) against J. Rayner of Norwich, for that the said Rayner did sue the said Cupper in the Court of Admiralty before J. Countee of Huntingdon and Ivery Lieutenant to John Duke of Bedford Admiral of England, for that Rayner having a Ship In Portu aquæ Jernemuthæ infra corpus Com Norff. ready for a Voyage to Zealand, the said Cupper entred the said Ship lying in the said haven, and took away divers goods in the same being, asserendo per prædictum placitum res illas super altum mare emeruisse, ac si res illæ super altum mare emerissent cum non ibi, sed apud Jernemutham contra formam statutorum præd', which also proveth that the haven is within the body of the County.

2 Mich. 31 H. 6.
Rot. 315. in Banc.
Hil. 2. Ph. & Mar.
Rot. 130. Cr. a
prohibition upon
a Charter-party.
Hil. 17 Eliz. Rot.
410. Cr. Spencers
case, and infinite
others upon Char-
ter-parties.

In the same Term in the same Court a like action between John Widewell and the said John Rayner, Rot. 123. which with many others being to one effect we omit.

2 Mich. 31 H. 6. Rot. 215. between William Hore, and Jeffery Unton for a suit in the Court of Admiralty before Henry Duke of Exeter, Admiral of England, concerning a contract of fourscore pounds upon a Charter-party of affraic of a Ship of the said Jeffery called the Trinity of Harflew to go from the Port of Pole

Pole towards the parts of *Heland*, cum contractus ille apud novam Sarum infra corpus Comitatus, & non super altum mare factus & junctus fuit, contra formam statutorum prædⁱ. The Defendant pleaded to issue, which was found against him, and damages assessed to a hundred marks, and costs to forty pound: and thereupon judgment is given by the Court, that he should recover his damages in duplo, according to the Statute, &c. Which judgment directly proveth, that if a Charter-party or any other contract be made within City, Town, or County of the Realm, though the performance thereof be to be done and performed upon the high Sea, yet the Admiral hath no jurisdiction, because it may be tried by the Common Law, as by the said Record it appeareth. But where the whole is to be done supra altum mare, and no part of it infra corpus Comitatus, the Admiral hath jurisdiction.

The Statute of 32 H. 8. c. 14. Concerning freights of Ships giveth to the Lord Admiral or his Deputy power to make Certificate concerning the Ships of Aliens in Ports, &c. And if the Lord Admiral or his Deputy be not resistant, then it giveth power to the Customer and Controller, or their Deputy to make Certificate: but without question this giveth no power to the Lord Admiral to hold plea of freights of Ships more then he had before, no more then it doth to the Customer and Controller, to whom equal power is given by the Act to make Certificate concerning the Ships of Aliens, &c. in the absence of the Lord Admiral or his Deputy, as to the Lord Admiral or his Deputy being present; and yet no man will affirm, that the Customer and Controller can hold plea of freights.

32 H. 8. c. 14.

Mich. 38 H. 6. Rot. 36. cr. A *Wemunire* brought by John Cassy Esq; Qui tam, &c. against Richard Beuchamp, Thomas Paunce Esquires, and others upon the Statute of 16 R. 2. for suing in Curia Romana vel alibi, of matters belonging to the Common Law. For that the Defendant did sue the Plaintiff in the Admiral Court before Henry Duke of Exeter, that the said John Cassy did take and carry away certain Jewels super altum mare, ubi idem Johannes Cassy bona illa apud Stratford at Bowe infra corpus Comitatus Middⁱ & non super altum mare cepit, which is so evident, and of so dangerous consequent, as no application shall be made thereof.

Mich. 38 H. 6. Rot. 36. cr.

In the book of Entries fol. 23. tit. Admiralty, it appeareth that the taking of a Ship called the Trinity of London lying upon the River at E. in the County of Kent is not super altum mare, but infra corpus Comitatus Kantia. And therefore a suit for the taking of that Ship lying there in the Admiral Court before John Carl of Huntingdon Admiral of England appeareth to be against the said Statutes, and yet no question that taking was infra fluxum & refluxum maris, & infra primos pontes.

Book of Entries fol. 23.

9 H. 7. A *Wemunire* brought for a suit in the Admiral Court before John Carl of Oxford for taking and carrying away, quendam naviculam apud Horton Key at Southlyn, &c. supposing the same to be super altum mare, where it was infra corpus Comitatus.

Book of Entries ubi supra.

Mich. 16 H. 8. Rot. 140. The River of Thames at Belinsgate is not within the jurisdiction of the Admiral, but infra corpus comitatus.

Mich. 16 H. 8. Rot. 140.

35 H. 8. A prohibition to John Dudley Knight, Viscount Lisle for holding plea in the Court of Admiralty for a contract made in Rivo Thamesia, supposing the same to be super altum mare, where in truth it was in Rivo Thamesia apud B. in Comⁱ Essex, which notwithstanding was infra fluxum & refluxum aquæ, & infra primos pontes.

Book of Entries ubi supra.

Hil. 36 H. 8. Rot. 38. cr. The like prohibition inter Wheler & Warner, Eodem termino Rot. Inter Too'y & Lewes, a prohibition for a contract made at Danlike, in partibus transmarinis. And in 2 Jac. Regis, the whole Court of Common Pleas, because the libel supposed the Act to be done in partibus exteris & transmarinis, granted a prohibition.

Hil. 36 H. 8. Rot. 38. cr.

Trin. 38 H. 8. Rot. 126. between Crane and Bell a promise made at Dertmouth, that a Ship called the Mary Fortune should pass safely without taking and sur-
prising, &c. which Ship was after taken by the Spaniards super altum mare,

Hil. 2 Jac. Regis, In communi Bancⁱ Int^r Theodor Tomlinson Quer^r & Philips Def. Tr. 38 H. 8. Rot. 126.

is not determinable in the Court of the admiralty, for that albeit the taking was upon the high Sea, yet the promise was made upon the land, whereupon an action doth lye at the Common Law.

Tr. 3 & 4 Ph. & Mar. Rot. 709. in Banco.

Eodem Termino Rot. 811. in Banc.

Hil. 4 & 5 Ph. & M. Rot. 831.

Mich. 39 & 40 El. Rot. 3158.

Mic. 3 Jac. in Scaccar.

See in the Chapt. of the Court of the Constable, and Marshal.

¶ 3 By book-cases and authorities in Law. Temps E. 1. Avowry 192. in Comuni Banc.

8 E. 2. tit. Coron. 399.

43 E. 3. Vid. 5 E. 3. 3. Tit. Replevin. 41.

Pasch. 17 El. in Scaccario.

Trin. 3 & 4 Ph. & Mar. Rot. 709. between Lawrence Malherode, and Richard Wyn, a prohibition out of the Court of Common Pleas to the Court of the Admiralty, William Lord Howard then Lord Admiral being.

Trin. 3 & 4 Ph. & Mar. Rot. 811. the like prohibition granted out of the same Court to the Court of Admiralty between Robert Inne Plaintiff, and Roger Garland Defendant.

Hil. 4 & 5 Ph. & Mar. Rot. 831. the like prohibition.

Many are the presidents in the Reign of the late Queen Eliz. in the Court of Common Pleas, the Kings Bench and Exchequer, which we purposely omit, and insist rather upon the more ancient, yet one or two we will remember concerning things happening beyond Sea, whereupon an action did lye at the Common Law agreeable with the president in the Reign of H. 8.

Mich. 39 & 40 Eliz. Rot. 3158. A prohibition out of the Court of Common Pleas for a suit in the Admiral Court upon a bill under the parties hand and seal for French crowns, for that the bill was made beyond Sea.

And Mich. 3. Jac. a prohibition was granted in the like case to the Admiral Court by the Court of Exchequer, for Sir John Swinarton having the privilege of that Court for a matter rising beyond the Sea. And divers prohibitions granted also in the like case in the Kings Bench.

For causes of actions which are transitory done out of the Realm, an action may lye at the Common Law, but if the cause be criminal or local done beyond Sea, then before the Constable and Marshal only.

Concerning the last manner of proof, viz. by Book-cases and authorities of our books.

In the Register the most ancient book of the Law, fol. F. N. B. fol. 87. I. & 88 F.

In Temps E. 1. Tit. Avowry 192. a Replevin was brought for the taking of a Ship in the Coast of Scarborough in the Sea, and for carrying the same from thence into the County of N. Muford the Plaintiff countereth of a taking in the Coast of Scarborough, which is neither Town nor place, out of which a Jury may be taken, for that the Coast is four miles long, and also of a thing done in the Sea, this Court hath no consuance, for certain judgment is given thereof to Mariners. Berry Chief Justice of the Common Pleas; the King willeth, that the peace be as well kept on the Sea, as on the Land, and we find that you are come hither by due process, and therefore ruled him to answer. Out of which four things are to be observed. First, That it is called the Sea which is not within any County from whence a Jury may come. Secondly, That the Sea (being not within any County) is not within the jurisdiction of the Court of Common Pleas, but belongs to the Admiral jurisdiction. Thirdly, That when the Ship came within the River, then it is confessed to be within the County of Northumberland. Lastly, That when a taking is partly on the Sea, and partly in a River, the Common Law shall have jurisdiction.

8 E. 2. tit. Coron. 399. It is no part of the Sea, where one may see what is done of the one part of the water, and of the other, as to see from one Land to the other, that the Coroner shall exercise his office in this case, and of this the Country may have knowledge; whereby it appeareth that things done there are triable by the Country (that is, by Jury) and consequently not in the Admiral Court.

43 E. 3. Norff. as the laid Lord Dier voucheth the Record in Mich. 15 & 16. El. saying (quod vidi) the case was, that the Abbot of Ramsey was seised of the mannoz of Brancafter in Norff. bordering upon the Sea, upon sixty acres of marsh of which mannoz the Sea did flow and reflow; and yet it was adjudged parcel of the Abbots mannoz, and by consequence within the body of the County unto the low water mark.

And it was adjudged Pasch. 17 El. in the Exchequer, Diggs being Plaintiff, that

that the Land between the flowing and reflowing of the Sea belonged to the Lord of the Mannor adjoining, as the Lord Dier doth there report.

48 E. 3. 3. If a mariner makes a covenant with me to serve me in a Ship upon the Sea, yet if lower ne soit pay, it shall be demanded in this Court by the Common Law, & ne per la Ley de mariner.

46 E. 3. tit. Conusans 36. An Action of Trespass was brought for taking of a Ship in the Haven of Hull against certain persons; the Mayor and Bailiffs of Hull demanded conusans by the Charter of the King granted unto them, that the Citizens and Burgeses of Hull should not be impleaded alibi de aliquibus transgressionibus, conventionibus & contractibus infra burgum, &c. quam infra burgum. And the Conusans was granted; which proved that the Haven of Hull where the Ship did ride was infra Burgum de Hull, and by consequence infra corpus comitatus, and determinable by the Common Law, and not in the Admiral Court.

7 R. 2. tit. Trespass in Scatham pl. 54. In Trespass for a Ship and certain Merchandise taken away (which Trespass must of necessity be alleged in some Town and County in some River or Haven) the defendant pleaded, that he did take them In le haut mere ove les Normans queux sont enemies le Roy. And it is ruled a good plea, which concurrerh with the other books.

7 H. 6. 22. 35. An Action lieth at the Common Law for forestalling, &c. in a Port or Haven, for that it is infra corpus comitatus, and triable by the Common Law, and by consequence the Admiral hath no Jurisdiction there.

19 H. 6. 7. The Statute doth restrain that the Admiral shall not hold plea of any thing rising within any of the Counties of the Realm, but executions he may make upon the Land. And therefore where it is said in 22 Aff. pl. 93. that every water which flows and reflows, is an Arm of the Sea, yet it followeth not that the Admiral shall have Jurisdiction there, unless it be out of every County, or else such a place whereof the County cannot take knowledge, as it appeareth in the book of 8 E. 2. before cited. But of this more hereafter.

Fortescue cap. 32. fo. 38. Nam si quæ super altum mare extra corpus cujuslibet comitatus regni illius fiant quæ postmodum in placito coram Admirallo Angliæ deducantur per testes, illa juxta legum Angliæ Sanctiones terminari debent, which proveth by express words that the Jurisdiction of the Admiral is confined to the high Sea, which is not within any County of the Realm.

2 R. 3. fo. 12. Hibernici sunt sub Admirallo Angliæ de re facta super altum mare, which agreeth with the former, viz. that the Jurisdiction of the Admiral is super altum mare.

Stanford. lib. 1. pl. cor. fo. 51. b. If one be slain upon any Arm of the Sea, where a man may see the Land of the one part and of the other, the Coroner shall inquire of this, and not the Admiral, because the Country may take consance of it, and doth vouch the said Authority of 8 E. 2. whereupon he concludeth in these words. So this proveth, that by the Common Law before the Statute of 2 H. 4. &c. the Admiral had no Jurisdiction but upon the high Sea, which only Authority were sufficient to overrule all the said questions. For hereby appeareth, that the Jurisdiction of the Admiral is only confined by the Common Law to the high Sea, and agreeth with all the former Book cases and Acts of Parliament.

4 & 5 Ph. & Mar. Dier 159. b. By the Libel in the Admiral Court the cause is supposed to commence Sur le haut mere & infra Jurisdictionem del Admiralty, ubi revera facta fuit in tali loco infra corpus comitatus & non super altum mare. Whereby it also appeareth, that the Lord Admirals power is confined to the high Sea.

Pasch. 28 Eliz. in the Kings Bench the case was, that a charter-party by deed indented, was made at Thetford in the County of Norfolk, between Evangelist Constantine of the one party, and Hugh Gynne of the other part, by the which Constantine did covenant with Gynne that a certain Ship should sail with merchandizes and goods of Hugh Gynne to Muttrell in Spain, and there should remain by certain days, &c. Upon the breach of which Covenant Gynne brought an

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Action

Action of debt of 500 li. upon a clause in the same Charter, and alledged the breach of the Covenant, for that the Ship did not remain at Mutterel in Spain, by so many days as were limited by the Covenant. Whereupon issue was taken and tried before Sir Christopher Wray Chief Justice of England, and found for the plaintiff: and in arrest of Judgment it was shewed, that this issue did rise out of a place totally and merely in a foreign Kingdom out of the Realm, from whence no Jury of twelve men could come, and therefore the trial was insufficient. But it was adjudged by Sir Christopher Wray, Sir Thomas Gawdy, and the whole Court of Kings Bench after great deliberation, that the plaintiff should recover 500 li. besides his damages and costs, for that the Charter party whereupon the action is brought was made at Thetford within this Realm, and that the trial being in the same place where the action was brought, was sufficient.

Mich. 30 & 31.
Eliz. coram Rege.

And the like case was after adjudged in the same Court, Mich. 30 & 31 Eliz. in an Action upon the case upon an Assumpsit grounded upon an instrument called a Policy, commonly made between Merchants for assurance of their goods, whereby the undertaker did assume that such a Ship should sail from Melcombe Regis in the County of Dorset unto Abville in France safely without violence, &c. and declared that the said Ship in sailing towards Abville, that is to say, in the River of Somme in the Realm of France, was arrested by the French King, &c. whereupon issue was taken and tried, where the Action upon the Assumpsit was brought, and again the validity of the trial newly questioned, and in the end resolved and adjudged as before: which Judgment proves, that where part of the contract or other thing is made in any place within any of the Counties of the Realm, though the performance thereof be upon the high Sea, the trial and determination of the whole Act belongeth to the Common Law, and consequently the Court of the Admiralty ought not to deal therewith.

These answers being delivered to King James, magna est veritas & prevaleuit.

¶ The Kings Prerogative of the Sea, &c.

¶ The Antiquity of the Court of Admiralty long before the Reign of E. 3. in whose days some have dreamed it began.

* In Archivis in Turri London.

This cause was handled in or about the 22 year of E. 1. as by divers parts of the Record it appeareth.

Admiral of the Sea of England.

Time out of mind

Laws, Statutes and Ordinances.

Now for the great prerogative and interest that the King of England hath in the Seas of England, and for the Antiquity of the Court of the Admiralty of England, and of the name of the Admiral, we have seen an ancient and a notable Record intituled, De superioritate maris Anglie & jure officii Admiralitatis in eodem: * So much whereof as we find in Archivis regis, we will transcribe de verbo in verbum, as it is in the Record it self.

A vous Seigneurs Auditors Deputes per le Rois de Engleterre & de France a redresser les damages faits as gents de lour Roialmes & des auters terres subgits a lour seignuries per mer & per terre en temps de pees & de trewes. Monstrent les procurours de Prelats & Nobles, & del Admirall de la mier d'Engleterre & de Comminalties des Cities & des Villes, & des Marchants, Mariners, Messagiers, & pelerins & des touts aultres du dit Roialme d'Engleterre & des aultres terres subgits a la seignurie du dit Roy d'Engleterre & daillours sicome de la marine de Gemue, Cateloigne, Espaigne, Alemaigne, Seland, Hoyland, Frise, Denemarch, & Norway & de plusours aultres lieux del Empier, que come les Roys d'Engleterre per raison du dit Roialme du temps dont il ny ad memoire du contrarie eussent este en paiceable possession de la souveraigne Seignurie de la mier d'Engleterre & des Isles isteaunts en ycele per ordinance & establisment des lois, estatuts, & defenses & des vesseaux autrement garnies que vesseaux de merchandise & de seurte prendre & sauve gardes doner en tous cas que mestier serra & par ordinance entre tout mancre des gents taunt dautre signurie come de lour propre de

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tous aultres faitz necessaries a la garde de pees, droiture & equitie par elongues passants & per souveraigne garde & toute manere de conissance & Justice haulte & basse sur les dites lois, estatuts, ordenances, & defences, & pur tous autres faits queux a le gouvernement de souveraigne Seignurie appartenir purrent es lieux avandits. Et A. de B. Admirall de la dit mier depute per le Roy d'Engliture, & tous les aultres Admirals par mesme celuy Roy d'Engliture & ces ancestors jades Royes d'Engliture eussent este en paisseable possession de la dit souveraigne garde ove la conissance & Justice & tous les aultres appartenances avanditz forprise en case dappele & le querele fait de eux a lour Souveraignes Roys d'Engliture de defalte de droit ou de mauvais judgement, & especialment pur empeschement metre & justice faire seurte prendre de la pees de tout manere de gents usants armes en la dit mier ou menans niefs aultrement appareilles ou garnies que nappertient au nief de marchants & en tous aultres points en queux homme poit avoir reasnable cause de suspicion vers eux de robbery, ou des aultres mesfaitz. Et come le maistre de Niefs du dit Royalme d'Engliture en absence des dits Admirals eussent este en paisible possession de conustre & juger des tous faits en la dite mier entre tous manere de gents selone les lois, estatuts & les defences, franchises & custumes.

Et come en le primer article de lalliance nadgaires faite entre les dites Roys en les traites sur le darreine pees de Paris soient comprises les paroles que sensuient en une sedule annexe a yceste.

Primerment il est traite & accorde entre nous & les messagers & les procurours de surdiz en nom des dits Roys que yceux Roys serront lun a lautre desores en avant bons verrois & loyaulx amies & eydans cointre tout homme sarve Lesglise de Rome en tiels manere que si ascun ou plusieurs quicunques ilz fuissent voloient deponticer, empescher, ou troubler les dits Roys en franchises & liberties, privileges es droitz, es droitures, ou es custumes de eux & de lour roialmes quilz serront bons & loyaulx amys & aidans contre toute homme que puisse venire & morir a defendre, gardir & maintenir les franchises, les liberties, les privileges, les droitz, les droitures, & les custumes de susdites, except le dit Roy d'Engliture Monsieur John Duc de Breban en Brabant & ses heires descendus de luy & de la fille le Roy d'Engliture, & except pur le dit nostre Seignior le Roy de France excellent Prince Dubert Roy d'Alemaigne ses heires Roy d'Alemaigne, & Mounseur Johan Counte de Henan en Henan, & que lun ne serra en consaile ne en aid ou lautre perde vie, membre, estate ne honour temporel. Monsieur Reymer Grimbald maistre de la navy du dit Roy de France que se dit estre Admirall de la dit mier depute per son Seignior avantdit pur sa guerre contré les Flemmings apres le dite alliance faite & affirmee contre le forme & la force de mesme lalliance & l'intention de cieux qui la firent l'office del Admirall en la dite mier d'Engliture par commission du dit Roy de France torceusement emprist & usa un an & plus en pernant le gents & marchants du Royalme d'Engliture & daillours per la dite mier paissaints ovesque leur biens & les gents ainsi prises livra a la prison de son dit Seignior le Roy de France leur biens & marchandizes a les rescetvours per mesme celuy Roy de France a ceo depute en les Ports de son dit Royalme come

De Botetort,
Admiral of the
Sea.

Note for the antiquity of the Admiralty of England. The said De Botetort was Admiral of the Sea coasting upon Yarmouth in Norfolk (right over against France) and of that station in Anno 22 E.1.

The League between E.1. and the French King.

Margaret the third daughter of E.1. was married to John the Duke of Brabant, An.Dom. 1290.

Monsieur Reymer Grimbald Master of the French Navy.

The Admiral of
England to whom
the conuſance ap-
pertains, &c.

a luy forfait & acquis fiſt amener per ſon judgement & agard, & la priſe & detenne des dites gents ove leur dites biens & marchandizes & ſon dit jugement, & agard ſur la forfaiture de eaux & acquest ait juſtifie devant vous ſeigneurs Auditors en eſcripts per my l'autorite de ſa dite com- miſſion ſur l'Admiralte avandite per lui ainſi uſurpe & per une deſenſe communement fait per le Roy d'Englittere per my ſon poer lelonc la forme de le tiers article de lalliance avandite qui contient les paroles deſuſcripts en requérant que de ceo il en fuſſe quitz & absoluts en grand damage & pre- judice du dite Roy d'Englittere & des Prelats & Nobles & aultres deſuſ- nomes. Purquoy les dits procurours & les noms de leurs ditz Seigneurs a vous Seigneurs Auditors avanditz pryent que deliverance dewe & haſtine des dites gent. oveſq; leur biens & marchandises ainſi priſes & detenues faicets eſtre fait al Admiral du dit Roy d'Englittere a qui la cogniſance de ceo apertient de droit ſicome deſſus eſt dit ainſi quilz ſauns diſturbance de vous & d'autre puiſſe de ceo conoiſtre & faire ceo que apertient a ſon office avant- dit. Et que le dit Monsieur Reymer ſoit condempne & diſtreint a faire du ſatisfaction a tous les dits damages ſevant come il purra ſuffire & en ſa deſalte ſon dit Seignior le Roy de France per que il eſtoit deputeſ al dit office, & que apres dewe ſatisfaction faitz as dits damages le dit Monsieur Raymer ſoit ſi duement punis pur le blemmeſſement de ladite alliance, que la puniſſion de luy ſoit as aultres exsample pur temps a venir.

Item in alio Rotulo annexo.

Admiral of
England.

Item, a la fin que venes & conſideres les formes des proces & les letters or- denees per les conſailers le Aiel noſtre Seignior le Roy, &c. eſpecialment a re- tenir & maintenir la ſouverain que ſes dits anceſtors Roys d'Englittere ſo- loient avoir en la dite mier d'Englittere, quant al amendment declaration & interpretation des lois per eux faites a gouverner tous maneres des gents paſſants per la dit mier. Et primerement a ſon Admiral & as Maiſters & Mariners des Niefs de Cync ports d'Englittere, & des autres terres an- nexes a la corone d'Englittere emendant a ſa armee en la dite mier pur re- tenir & maintenir la garde des lois avantditz, & la puniſſion de tous faitz al encontre en la mier ſuſdite.

*Item in alio Rotulo de Articulis ſuper quibus Juſticiarii domini
Regis ſunt conſulendi de Anno regni regis E. 3. 12.*

* E. 1. avus E. 3.

Item ad finem quod reſumatur & continuatur ad ſubditorum proſecutio- nem forma procedendi quondam ordinata & inchoata per* avum domini no- ſtri regis & ejus conſilium ad retinendum & conſervandum antiquam ſupe- rioritatem maris Angliæ, & nos officii Admiralitatis in eodem quoad corri- gendum, interpretandum, declarandum & conſervandum leges & ſtatuta per ejus antecſſores Angliæ Reges dudum ordinata ad conſervandum pacem & juſtitiam inter omnes gentes nationis cujuſcunque per mare Angliæ trans- euntes, & ad cognoscendum ſuper omnibus in contrarium attemptatis in eo- dem, & ad puniendum delinquentes & damna paſſis ſatisfaciendum. Quæ quidem leges & ſtatuta per dominum Richardum quondam regem Angliæ in reditu ſuo a terra ſancta correſta fuerunt, interpretata & in inſula Ole- ron publicata & nominata in Gallica lingua La Ley Olyron.

R. 1.
Inſula de Olyron
in Gallia.

And

And long before this King Edgar in his Charter saith thus: Mihi concessit See this Charter in the Epistle to the 4 book of Reports.
 propitia Divinitas cum Anglorum imperio omnia Regna insularum Oceani cum suis
 ferocissimis regibus usque Norwegiam ac maximam partem Hiberniæ cum sua nobi-
 lissima Civitate de Dublin Anglorum Regno subjugare, &c.

We have also found a Record in 10 E.3. in these words.

Rex dilecto & fideli suo Galfrido de Say Admirallo Flote sue Navium Rot. Scotiæ
 ab ore aquæ Thamesiæ vers' partes occidentales, salutem. Cum nuper vobis 10 E.3. m.16.
 per literas nostras mandaverimus quod vos una cum quibusdam navibus de
 quinque portibus nostris quas de guerro pro obsequio nostro muniri & para-
 ri mandavimus supra mare proficiscerimini ad obviamd' & resistend' quibus-
 dam galeis in diversis partibus exteris provis' & hominibus armatis muni-
 tis quæ ad partes Domini nostri ad gravand' nos & gentes nostras, vel ad
 partes Scotiæ in inimicorum nostrorum ibidem succursum divertere ut acce-
 pimus proponebant. Et quia jam nobis ab aliquibus est relatum quod galeæ
 hujusmodi usque ad numerum viginti & sex ad partes Britan' & Norman:
 noviter acceperunt & ibidem adhuc se tenent ad mala, ut creditur, contra
 nos & nostros quæ poterunt perpetrand', vel ad succurrend' dictis nostris,
 ut prædicitur, inimicis. Nos advertentes quod progenitores nostri Reges
 Angliæ Domini maris Anglicani circumquaque & etiam defensores contra
 hostium invasiones ante hæc tempora extiterunt, & plurimum nos taderet, si
 honor noster regius in defensione hujusmodi nostris (quod absit) deperiat
 temporibus, aut in aliquo minuat, cupientesq; hujusmodi periculis auxili-
 ante Domino obviare, ac salvationi ac defensionem Regni & populi nostro-
 rum providere, malitiamq; hostium nostrorum resrenari: Vobis in fide &
 ligencia quibus nobis ascripti estis, & sicut de vobis specialiter confidi-
 mus, mandamus firmiter injungendo quod statim visis præsentibus & absq;
 ulteriori dilatione naves portuum prædictorum, ac alias naves quæ jam pa-
 ratæ existunt supra mare teneatis, &c.

And because the Reader by this Record shall discern, that of ancient time
 there were several Admirals (for the wisdom of those days would not trust one
 man with so great a charge, nor any man to have a certain estate in an office of
 so great trust:) I will briefly give the Reader such light thereof as I have found
 of Record.

Rex commisit Galfrido de Lucy maritimam Angliæ custodiend' quamdiu Domi- Rot. Pat. anno
 no Regi placuerit, &c. 1 H.3.

Rex commisit Richardo Aguillum marinam Regis Norff. & Suff. &c. quamdiu Rot. Pat. anno
 nobis placuerit. 9 H. 3.

Petrus de Rival capitaneus Pictanie habet ad totam vitam suam custodiam om- Rot. Cart. 15 H.3.
 nium Portuum & totius costeræ marinæ Angliæ, excepto Portu de Dovor, qui est in
 custodia Huberti de Bargo.

Willielmus de Leybourne constituitur capitaneus nautarum & marinariarum de Rot. Vascon. 22 E.
 Regno & potestatis Regis, quamdiu Regi placuerit. 1. m. 8.

Willielmus de Leybourne Admirallus Angliæ.

Willielmus de Leybourne capitaneus marinariarum, &c.

Rot. Pat. 23 E.1.
 2 parte Pat. anno
 25 E.1. m.14.
 Claus. in Dorf.
 m. 18.

To let you know what we have observed in those times: there were also two
 other, the one had the government of all the Fleet from the mouth of the Thames
 Westward, and the other from the mouth of the Thames Northward.

Johannes Botetort custos Regis Portuum maritimarum versus partes Boreales. 1 parte Pat. 25 E.
 25 Martii. 1. m. 9.

Nicholaus Kyriell constituitur Admirallus flote omnium Navium ab ore aquæ 1 parte Pat. 10 E.2
 Thamesis tam quinque Portuum, quam aliorum Portuum & locorum per costeram
 maris versus partes occidentales, quamdiu Regi placuerit. Teste Rege apud Turrin
 London 8 Decembris.

Robertus

Claus. 15 E. 2.
Pat. 15 E. 2. Teste
Rege apud Ebor.
19 Maii.

1 parte Pat. anno
1 E. 3. m. 21.

2 parte Claus.
12 E. 3. in Dorf.

Rot. Pat. an. 14 H.
6. 25 Oct. 18 E. 4.

Rot. Parl. 7 H. 4.
nu. 19, 20. & c. 26. &
142. 9 H. 4. nu. 19.

11 H. 4. nu. 24.
Rot. Parl. 17 R. 2.
48. 4 H. 4. nu. 47.
11 H. 4. nu. 61.

7 R. 2. nu. 14.

1 part Instit.
S. 459. & 677.
11 H. 4. fol. 11.

Lord Berkley
Admiral.

The name.

Robertus de Leyborn Admirallus quarundam Navium Regis sup mari occidentali.
Robertus Battayli Admirallus flotæ Navium ab ore aquæ Thamefis de singulis
Portubus versus austrum.

Johannes Perbrome constituitur capitaneus, & Admirallus flotæ Navium magnæ
Geremuthe & omnium aliorum locorum ab ore aquæ Thamefis per costeram ma-
ris versus partes Boreales, quamdiu &c Teste Rege apud Stanf. 21 Aprilis.

Warrolius de Valloignes constituitur capitaneus & Admirallus flotæ Navium ab ore
aquæ Thamefis tam quinque Portuum quam aliorum Portuum & locorum per
costeram maris versus partes occidentales, quamdiu, &c. ut supra.

Petrus Bard Admirallus Navium ab ore aquæ Thamefis versus partes occidentales,
18 Augusti.

Thomas de Drayton Admirallus ab ore aquæ Thamefis versus partes Boreales.
18 Augusti.

And so in the Reigns of R. 2. H. 4. H. 5. H. 6. But in these and in former times
there was a great Admiral of England, Vid. supra p. 142, 143, 144.

The King did by Charter constitute John Holland Duke of Exeter and Henry
his son to be Admirallus Angliæ, Hiberniæ, & Aquitaniæ, pro termino vitæ.

This Charter being of a judicial office and granted to two, we hold to be
void: for such ancient offices must be granted as they formerly have been. This
Duke is he that is mentioned in the former Records, who being a great Peer
of the Realm endeavoured to incroach upon the Common Law, but the sub-
jects by course of Law were defended and recompensed.

The Merchants, Mariners, and Owners of Ships undertook the safeguard of
the Seas for the Subsidies of Tunnage and Poundage, &c. and that Merchants
should name two persons, the one for the South part, the other for the North
part, who by Commission should have the like power as other Admirals have
had touching the same.

Addition of some Records of Parliament.

All Statutes made concerning the Court of the Admiral shall be observed.
Sundry Towns of the West part prayed remedy against the Officers of the
Admiralty for holding plea of matters determinable by the Common Law, the
which they pray may be revoked: the Kings answer was, The Chancellor by the
advice of the Justices upon hearing of the matter shall remit the matter to the Com-
mon Law, and grant a prohibition.

The Earl of Northumberland Admiral of the North, and the Earl of De-
von' Admiral of the West, to receive the Subsidy of Tunnage and Poundage,
and to keep the Seas.

Addition of Books.

See the First part of the Institutes, Sect. 459. & Sect. 677. where Littleton
speaketh of a man out of the Realm, or beyond Sea, and add thereunto the no-
table case in Mich. 11 H. 4. fol. 11. pl. 85. Sovingles case, the Defendant in an ap-
peal of death being outlawed, brought his Writ of Error, and assigned for error,
that at the time of the Outlawry, and before, he was in the Kings service upon
the Sea in the company of the Lord Berkley then Admiral, and had a Writ unto
him to certify.

6 E. 2. Tit. Protection 46. 7 R. 2. Tit. Trespass Satham. 10 H. 7. fol. 7. a. Vide
18 H. 6. nu. 52. where the owner of a Ship shall answer for hurt done by his Ship,
though he be not party thereunto.

Vide Lacies case, Cr. 25 El. 1. 2. f. 93. Vid. l. 5. f. 106, 107. & 108. Sir Henry
Constables case. Lib. 6. f. 47. Dowdales case. Brook tit. error 177.

See certain Statutes, viz. 27 E. 3. c. 13. Stat. Staple. 31 H. 6. c. 4. 2 R. 3. c. 6. 28 H. 8.
cap. 16.

It appeareth by the former Records, that the Admiralty is sometime called
Admiralitas, sometime Admirallatus, and sometime by other names, as Admi-
rallus, Capitaneus or Custos maris, or Marina, or Maritania, or Flotæ navium, that
is,

is, of the Navy floating on the Sea. Ley marine, Ley del mariners.

The Officer is called Admiral indifferently both in English and in French. We name him in Latin Admirallus, and the Court Curia Admiralitatis, derived of Amir, id est, Præfectus, & αμιρ i. Marinus, Præfectus marinus, Admirallus, Admirallus. Admiralli curia res maritimas tractat: In hac numerantur Admirallus Angliæ, locum tenens & iudex, scribæ duo, serviens Curia Viceadmiralli Angliæ. Camden,

Hæda or Hitha, i. Portus a Haven, as Quæn-hiche, Lamb-hiche, &c. Hafne Courts, now Haven or Port Courts; Hable, i. Portus.

To conclude, the King of Englands Navy doth excel the Shipping of all other forain Kings and Princes: for if you respect beautiful Gallies, or stately beauty, they are so many large and spacious Kingly and Princely Palaces. If you regard strength and defence, they are so many moving impregnable Castles, and Barbicans, and were termed of old the walls of the Realm. When our English Navy is among the Ships of other Nations, it is like Lions inter pecora campi, and like a Falcon inter phasianos, perdoes; & alia volatilia timida cœli.

Besides, no part of the world have such timber for building and repairing of Ships, as our King hath.

CAP. XXIII.

*The Court of the Commission under the Great Seal
by force of the Statute of 28 H. 8. cap. 15.*

28 H. 8. cap. 15.

This Court must be holden Coram Admirallo Angliæ, seu ejus locum tenente, and 3 or 4 such other substantial persons, as shall be named by the Lord Chancellor for the time being.

The Commissioners

Their jurisdiction is to hear and determine all Treasons, Felonies, Robberies, Murders, and Confederacies committed or done upon the Sea, &c.

The Jurisdiction.

These offences shall be heard and determined according to the course of the Common Law, and therefore some of the Judges of the Realm are ever in this Commission.

To be heard and determined by the Common Law.

Concerning the mischief that was before the making of this Statute, and how the said Act hath been formerly expounded, you may read plentiful matter in the Third part of the Institutes, Cap. Piracy.

See the 3. part of the Instit. Cap. Piracy, pag 111, 112. &c.

The process and proceedings herein are in the name of the King: So before Cap. Chivalry, p. 124. that the Statute of 35 H. 8. c. 2. nor that of 5 E. 6. cap. 11. taketh not away this Act of 28 H. 8. concerning treasons; Note, that in all the Commissions granted for the execution of this Act of 28 H. 8. since the said Acts of 35 H. 8. 5 E. 6. power and authority is given to hear and determine all Treasons, &c. done upon the Sea.

CAP. XXIV.

Of Port-motes, alias Port-courts, alias Port-mote Courts.

A Port-mote is a Court kept in Haven Towns, or Ports, and thereof taketh his name Curia Portus, &c.

* See in the Chap. of the Courts of the Forest.

* Hereof cometh in London Queen-hithe, and in Lambeth Lābhithc, &c.

Portus est locus in quo exportantur & importantur merces, à portando: And they are Porta Regni the * gates of the Realm. a Hicha & Heda often in Domesday is taken for a Haven or Port, anciently written Hafne and now Haven, by changing the f into v, as is usual.

Every Haven is within the body of the County, &c. whereof s^e before plentiful matter in the Chapter of the Court of the Admiralty proceeding according to the Civil Law. See 43 Eliz. cap. 15.

CAP. XXV.

The Power and Authority of Commissioners and others for the maintaining and erecting of Beacons, signs of the Sea, or Light-houses, and Sea-marks, and concerning Watches.

See the 3 part of the Inst. Cap. buildings, p. 204.

Beacon.

BEacon, this word is derived of the Saxon word Beacon, i. Speculum, unde speculantur adventus hostium, and is often called Signum speculatum, and Bechan in the Saxon language is signum dare, and we use the word to becken to at this day.

Before the Reign of E. 3. there were but stacks of wood set upon high places, which were fired when the coming of enemies were descried, but in his Reign pitch bores, as now they be, were in stead of those stacks of wood set up, and this properly is a Beacon.

Light-houses.

* ἀπὸ τῆς φαιῶς,

id est, lucidum.

Sea-marks.

Light-houses, Ignes speculatorii, seu monitorii, seu lumen maritimum, seu * pharus, unde versus,

Lumina noctivagæ tollit Pharus æmula Lunæ.

These Light-houses are properly to direct Seafaring men in the night when they cannot s^e marks, and these are also Signa speculatoria.

Sea-marks, as Steeples, Churches, Castles, Trees, and such like for direction of Seafaring men in the day time, and these are called Signa marina, or speculatoria, or signa nautis, whereof Virgil 5. Æneids.

Hic viridem Æneas frondenti ex ilice metam

Constituit * signum nautis pater, unde reverti

Sciverit, & longos ubi circumflectere cursus, &c.

* Id est Insignium.

So as you may divide Specula or signa speculatoria, or signa nautis into three branches, viz. into Beacons, Light-houses, and Sea-marks.

At the Common Law none but the King only could erect any of these three, which ever was done by the Kings Commission under the Great Seal, as taking some few examples for many.

De

De signis super montes per ignem faciend'.

De signis super montes faciend'.

Rex assignavit a Henricum, Epū Norwic, & b Willielmum Comitem Suff. & alios, &c. (inter alia) ad signa speculatoria super montes in com. Norff. ponend. Et similes Commissiones in aliis Comitibus.

Vide Rot. Clauf. 1 R.2.m.41. in Dorf. pro vigiliis & ignibus speculatoriis, & monitoriis.

He that is desirous to see more of **Beacons**, &c. and watching of the same, let him read the Act of 5 H. 4. which is an Act of Parliament; and Dorſ. Pat. Anno 28 H. 6. parte 2. m. 21. in com. Kanc' & memb. 13. pro com. Norff. pro ſignis, Anglice **Beacons**, & vigiliis. Et Dorſ. Pat. Anno 1 E. 4. parte 3. &c.

But of latter times by the Letters Patents granted to the Lord Admirall he hath power to erect Beacons, Sea-marks and Signs for the Sea, &c.

By the Act of 8 Eliz. it is provided and enacted, That the Master, Wardens and Assistants of the Trinity house of *Debtford, Strand* (a company of the chiefest and most expert Masters and Governors of Ships) shall and may lawfully from time to time at their will and pleasure, and at their costs, make, erect, and set up such and so many Beacons, marks and signs for the Sea in the Sea-shoars, and up-land near the Sea coasts, or forelands of the Sea only for Sea-marks, as to them shall seem most meet, whereby the dangers may be avoided, and Ships the better come to their Ports. And all such Beacons, marks and signs so by them to be erected, shall be continued, renewed and maintained from time to time at the costs and charges of the said Master, Wardens and Assistants. An excellent Law, that this power and authority was given to them which had greatest skill, seeing they were works for the safety of the Realm, and safeguard of the lives of Sea-faring men, and that these works should be erected, and made, and continued by them at their own costs and charges, because they knew to go the nearest way.

Beconagium signifieth money due or payable for the maintenance of Peacons, or the watching of the same. What punishment they incur which take down, sell, or otherwise cut down any Sea-marks, see the said Act of 8 El. ubi supra, where in it is to be observed, that if the person offending be not able to pay the penalty therein inflicted, he shall be deemed convict of outlawry, ipso facto, to all constructions and purposes: the like whereof we have not observed in any other statute. Wardwite, alias Warwite, or Ward penny, to be free from contribution of money to Watches and Wardes.

We have out of an ancient Manuscript transcribed this ordination that followeth, which in the County of Norff. hath been observed, and it is very probable that the like hath been done by like Authority in other maritime Counties.

Ordinatio pro Vigill' observand' in Com' prædict' a Lynne
usque Yermouth.

Hæc igitur autoritate mandati nos Robert de monte alto & Thomas de Bardolf mandamus Vic' Norff. quod venire faciat coram nobis apud Norwic' die Mercurii in fest' decollationis Sancti Johannis Baptist. prox' futur' omnes milites, omnes capit' Constabul. hundred, & Constabul. vill' & duos homines de discretior' cujuslibet villæ ubi portus vel applicat' Navium in balliva sua tam infra libertat' quam extra in com. prædict. ad consulend', formand', auxiliand' qualiter & quomodo dict' custod' securius pro salvatione partium illarum fieri possit, & ad faciend' quod ex parte dom' regis super præmissis injungitur. Ad quem diem nos dict' Robert & Thomas personaliter accessimus ibidem, ac milit', capit' Constabul' hundred', Constabul' vill' cum omnibus hominibus vill' ubi applicat' Navium exist' de Portu Lynne & de Portu Yarmouth coram nobis ibidem compar', & assuerunt, quod valde necesse esset pro salvat' totius patriæ quod vigill' fiant

Ror. Scott. 10 E. 3.
Ror. Clau. Vale 10 E. 3.
Ror. Franc 47 E. 3. m. 25.
a Henricum Spe-
cerlic of a Soldier
became a Bishop.
b William of Ford
comes Sum.
c Rot. Par. 5 H. 4.
nu. 24. not in print
worthy to be read.

8 Eliz cap. 13.

Pasch. & Jac. it was resolved by the two Chief Justices, Attorney and Solicitor, that this A& extended as well to Light-houses in the night as to Beacons, &c. by the day.

**Convict of out-
lawry.**

Norfolk.

Robertus de Monte
alto and Tho. de
Bardolfe sat in Par-
liament.
14 E. 2. as Barons
of the Realm, as
appeareth in the
Parliament Rolls.

* 4 H. 4. cap. 3.
Watches to be
made upon the Sea
coast by the num-
ber of the people,
in the places, and
in manner and
form as they were
wont to be.
Freebrigge.
Clackclofe.

in locis periculosis sicut * antiquo more fieri solebant juxta mare. Et quod omnes homines corpor. valid. de Com. Norf. contribuend' ad ill. faciend. per quod ordinat. & consens. eorum concordat' est quod due vigill. per sex homines de corpore potenti tam per dies quam per noctes fieri in hundred' de Freebrigge, viz. apud Wolverton, & apud Clencherne, eo quod dict' hundred' jung. se mari a Wisbiche usque Dersingham per 14. leucas. Et quod quilibet vigilans capiet per diem & per noctem pro vadiis suis 3 d. Et quod hundred' de Clackclofe adjung' eidem hundred' de Freebrigge ad contribuend' ad vigill. illa faciend', viz. pro qualibet septiman' 4 s. 6 d. & idem hundred. de Freebrigge 6 s. pro septiman', Et sciend. est 77 vill. continentur in dict. hundredo quæ assignantur ad dict. vigill. faciend'.

Fiat etiam una vigill. apud Southlyne in Clinchern, &c.

Smythdon.

Item quod una vigill. fiet in hundred. de Smythdon apud Thornham per sex homines, eo quod dictum hundred. jungit se mari de Dersingham usq; Deepedal fenn per 12 leucas. Et quod Hundred. de Southgrenhoe & Laundiche adjung. eidem hundred' de Smythdon ad contribuend' ad vigill. ill. faciend', viz. hundred' de Southgrenhoe 3 s. 6 d. per septiman. & hundred. de Landiche 4 s. per septiman', & hundred. de Smythden 3 s. & continent. in dict. hundred. 79 vill. ad vigill. illa faciend.

Southgrenhoe.
Laundiche.

Gallow.

Et fiat una vigill' in hundred. de Gallowe apud Burnham per 4 homines, eo quod dict. hundred. jungit se mari de Deepedale usque Holkham per 3 leucas. Et hundred. de Brothercrosse adjungit. eidem hund. ad contribuend. ad vigill. ill. faciend', viz. hundred. de Brothercrosse 3 s. per septim. & idem hundred. de Gallowe 4 s. per septim'. Et sciend. est 45 vill. sunt in dict. hundred. ad vigill. illa faciend.

Brothercrosse.

Northgrenhoe.

Item fiet un. vigil. in hundred. de Northgrenhoe apud Holkham per 6. homines, eo quod dict. hundred. jungit se mari, a Holkham usque Marston per 6 leucas. Et hundred. de Weyland, Giltcrosse, Grimshoe, & Ersham adjung. eidem hundred. ad contribuend. ad vigill. illa faciend', viz. Weyland 2 s. per septim', Grimshoe 2 s. per septim', Giltcrosse 2 s. per septim', & Ersham 2 s. per septim', & idem hundred' de Northgrenhoe 2 s. per septim'. Et sciend' est quod 76 vill. sunt in dict. hundred. ad vigill. ill. faciend.

Weyland.
Giltcrosse.
Grimshoe.
Ersham.

Holt.

Item fiet unum vigill. in hundred. de Holt apud Wabornn per sex homines, eo quod dict. hundred. jungit se mari a Marston usque Sheringham per 7 leucas. Et hundred. de Eynsford & Hempsteed adjung. eidem hundred' de Holt ad contribuend. ad vigill. faciend', viz. Eynsford 4 s. per septim', Hempsteed 3 s. 6 d. per septim. & idem Hundred. de Holt 3 s. per sept. & sciend' est quod 70 vill. sunt in dict. hundred. ad vigill. ill. faciend.

Eynsford.
Hempsteed.

Northerpingham.

Item fiet unum vigil. in hundred. de Northerpingham in duobus locis, viz. apud Ranton & Trimmingham per 5 homines, eo quod dict. hundred. jung. se mari a Sheringham usque Munshye becke per decem leucas, & hundred. de Southerpingham & Mitford cum vill. infra libert. adjung. eidem hundred. ad vigill. illa faciend, viz. Southerpingham 6 s. 8 d. per sept. Mitford 3 s. 6 d. per sept. & Northerpingham 12 s. 6 d. per sept'. Et sciend' est quod 77 vill. sunt in hundred. præd. ad vigill. ill. faciend.

Southerpingham.
Mitford.

Tunstead.
Humbleyard.
Fowrehoc.

Item fiet unum vigill. in hundred. de Tunsted apud Bastwick per sex homines, eo quod dict. hundred. jungit se mari a Munsley usque Walcote per

per 4 leucas. Et hundred. de Humbleyard & Fowrehoe adjung. eidem hundred. ad contribuend. ad vigil. ill. faciend. viz. Humbleyard 3 s. per sept. Fowrehoe 3 s. per sept. & Tunstead 4 s. 6 d. per sept. & sciend. est quod 76 vill. sunt in dict. Hund. ad vigil. ill. faciend.

Item fiet unum vigil. in hundred. de Happing in duobus locis, viz. apud Happingi Happingborow per 4 homines & apud Walsnesham per 4 homines, eo quod dict. hund. jungit se mari a Walcote usque Wimbesdele in loco periculoso per 6 leucas. Et hundred. de Taverham, Depwade, Shropham & Disse adjung. eidem hund. de Happing ad contribuend. ad vigil. ill. faciend. viz. hund. de Taverham 2 s. per sept. Depwade 3 s. per sept. Shropham 5 s. per sept. & Disse 2 s. per sept. & dict. hund. de Happing 2 s. per sept. Et sciend. est quod 60 vill. sunt in hund. predict. ad vigil. ill. faciend.

Item fiet unum vigil. in hund. de Eastflegge & Westflegge in tribus locis, viz. apud Winterton per 6 homines, apud Saltivos haven per sex homines, & apud Fordham per sex homines, eo quod dict. hund. jungit se mari a Wykeldock usque Bunton in Mitford in loco periculoso per 7 leucas, Et hund. de Walsbam, Blowfeild, Loddon, & Clavering adjung. eidem hund. ad contribuend. ad vigil. illa faciend. viz. Walsbam 4 s. 6 d. per sept. Blowfeild 4 s. 6 d. per sept. Loddon 5 s. 6 d. per sept. Clavering 5 s. 6 d. per sept. Westflegg 2 s. per sept. Eastflegg 2 s. per sept. Et sciendum est quod 102 vill. sunt in dict. hund. ad vigil. ill. faciend.

Eastflegge.
Westflegge.

Walsbam.
Blowfeild.
Loddon.
Clavering.

Præcept. est omnibus capital. Constabul. de hund. adjung. mari in locis predict. in forma predicta hac instant. die dominica prox. futur. & similiter præcept. est eisdem capital. Constabul. & omnibus aliis subconstabul. hundred. totius Com. quod sine dilatione levare & reparari fac. signa & fihares super mont. altior. in quolibet hund. Ita quod tota patria per illa signa quotiescunque necesse fuit premuniri posset, & quod ipse Constabul. capital. per avizam Constabul. villarum & aliorum proborum hominum agist. fac. fideliter denar. pro vad. vigil. in hundred. predict. instant. quod ordinat. solvend. de septimana in septim. ita quod defect. in vigil. predict. nullo modo inveniat per eorum defect. & similiter quod omnes qui agist. sunt ad arma & potent. ad portanda arma, & omnes illi qui loco potent. ad arma sua portanda assignat. sint providi, & parati sint indies nocte ad veniend. solemmiter distinct. & aperte in present. domini Walteri de Norwic. Episcopi ajuxta nos assiden. ibidem cur. * Cancar. totius Com. Norf. coram nobis un. fecimus proclamari. Et similiter præcept. est Vic. quod levare fac. denar. agist. in hundred. predict. pro costis & vad. præd. solvend.

Signa.
Fierbares.

* Vigiliarium.

For watches, and against night-walkers, see the Statute of Winch. 13. E. 1. cap. 4 5 E. 3. cap. 14. Vid. 5 H. 7. 5.

Vide Lamb. inter leges Edovardi regis, fo. 136. b. & inter leges Willielmi Regis fo. 125. a.

Quod homines de Larkfield, Filbarow street, Newchurch, & Worth in Com. Kane tenentur facere vigilias in Romney Marsh.

Dorf. Clauf.
8 H. 4. m. 3. & 103.

CAP. XXVI.

De Conservatore seu custode Treugarum, i. Induciarum & salvorum Regis Conductuum,

And incidently of the office, authority, and privilege of Ambassadors; And of Leagues, Treaties, and Truces.

2 H. 5. ca. 6. Stat. 1.

20 H. 6. cap. 11.

19 E. 4. 6. b.

18 H. 6. cap. 4.

20 H. 6. cap. 1.

Vide supra. p. 132.

* Regula.

19 E. 4. ubi supra.

See the third part

of the Instit. cap.

Treason.

Verb. League.

2 H. 5. cap. 6.

Hil. 14 Eliz.

Hil. 13 Eliz.

Hil. 12 Jac.

Carvel, or Caravel, is a swift Bark.

By the Statute of 2 H. 5. robbery, spoiling, breaking of Truces, and safe Conducts by any of the Kings liege people and subjects within England, Ireland, and Wales, or upon the maine Sea, was adjudged and determined to be High Treason: but this Branch concerning High Treason is repealed by the Statute of 20 H. 6. But by the said Act of 2 H. 5. for the better observation of truces and safe conducts, Conservator induciarum & salvorum regis conductuum was raised, and appointed in every Port of the Sea by Letters Patents. His office was to enquire of all offences done against the Kings truces and safe conducts upon the main Sea (out of the Counties, and out of the Liberties of the Cinque-ports) as Admirals, of custom, were wont.

It concerneth the Jurisdiction of divers Courts, and especially of the said Court before mentioned upon the said statute of 28 H. 8. and of the Court of the Admiralty, to know the rights of Leagues and Ambassadors, as far as the Laws of England extend unto, for of them we will only treat.

All Leagues or safe conducts are, or ought to be of record, that is, they ought to be enrolled in the Chancery to the end the subject may know, who be in amity with the King, and who be not; who be enemies, and can have no action here; and who in League, and may have Actions personal here. * In all treaties, the power of the one party and the other ought to be equal.

A League may be broken by levying of War, or by Ambassador or Herald. Bryan held opinion in 19 E. 4. ubi supra, that if all the subjects of England would make war with a King in League with the King of England without the assent of the King of England, that such a War was no breach of the League. See the statute of 2 H. 5. cap. 6. in the Preamble.

In the Duke of Norf. case Hil. 14 Eliz. the question was, whether the Lord Herise and other subjects of the King of Scots, that without his assent had wasted and burnt divers Towns in England, and proclaimed enemies, were enemies in Law within the statute of 25 E. 3. the League being between the King and the Scot: and resolved that they were enemies.

And in the Bishop of Ross case, Ann. 13 Eliz. the question being, An legatus, qui rebellionem contra principem ad quem legatus concitat, legati privilegiis gaudet, & non ut hostis poenis subiaceat. And it was resolved that he had lost the privilege of an Ambassador, and was subject to punishment.

Samuel Palache affirming himself to be the Subject and Ambassador of Mula Sedan King of Morocco to the States of the United Provinces, to treat and negotiate with them of divers matters between them; and they of the United Provinces having accepted him for an Agent or Legat. And the last of June 1611. there being enmity between the King of Morocco and the King of Spain, the King of Morocco made a Commission to the said Samuel to take Spaniards and their goods. The 25 of October 1613. the King of England gave him Letters of safe conduct as a publick Minister sent to the States of the United Provinces. 3 Martii 1613. the States licensed him to levy men to furnish his ships, &c. In June 1614. he took a Carvell of the Spaniards at the Canaries

naires laden with Sugar, and another ship there also laden with Hides, of the goods of Spaniards; and after, with distress of wind, he with the said *Pizes* was driven to Plymouth, there being at that time League both between England and Spain, and between England and the United Provinces, and wars between Spain and the United Provinces. And against this Samuel the Spanish Ambassador here in England complained at the Council Table, and charged him with Piracy. The said Samuel and his company being arrested, and the goods seized, the Spanish Ambassador prayed that he might proceed against him as a Pirat upon the said Statute of 28 H. 8. c. 15. The Lords of the Council referred the consideration of this request to the Chief Justice of England, being present at the Table, and to the Master of the Rolls, and Sir Daniel Dun Judge of the Admiralty, to consider of the case and to direct a course of justice therein indifferently. And the said referrees heard the Council learned both in the Common and Civil Laws, on both sides on two several days in this Term: and after conference between themselves, and with others, these points were resolved. First, That at this day there could be no Ambassador without Letters of credence of his * Sovereign, to another that had Sovereign Authority. *Legatus per litteras de sua legatione fidem facere debet, si exigantur, & commonitorium, s. Instructio- nes privas.* for the Ambassador himself for his direction.

Secondly, That of ancient time Ambassadors were called Oratores.

Jamq; Oratores aderant ex urbe Latina
Velati ramis olei —

And afterwards they were called Legati à legando, Nuntii à nuntiando, and afterwards Ambasiatores or Embasiatores and sometimes Agents: for *Omnis legatus est agens*, but *Omnis agens* is not *legatus*: For if he be sent from a King or absolute Potentate or State to a King or absolute Potentate or State to treat between them, although he in his Letters of Credence be termed an Agent or Nuntius, yet he is an Ambassador or Legate.

Thirdly, It was resolved that Ambassadors ought to be kept from all injuries and wrongs, and by the Law of all Countries and of all Nations they ought to be safe and sure in every place, in so much that it is not lawful to hurt the Ambassadors of our enemies: and herewith agreeth the Civil Law. And if a banished man be sent as Ambassador to the place from whence he is banished, he may not be detained or offended there, and this also agreeth with the Civil Law.

The case (which we have seen reported) in the Reign of H. 8. was this: There being amity between King H. 8. and the French King, and enmity between H. 8. and the Pope, * R. Pole a Rebel and Traitor to the King of England flyeth to Rome, whom the Pope being in amity with, the French King sendeth as Ambassador to him: the King of England demandeth his rebel of the French King, notwithstanding he was sent as Ambassador, Sed non prævaluit. And it is truly said, whosoever said it, Quia veritas à quocunque dicitur à Deo est, Fuit semper etiam apud Gentiles (qui nullam tenebant veræ fidei rationem) inviolabile nomen Nuntii & Legati, etiam si ab hostibus mitterentur semper salvi, & hodie apud Saracenos & Turcos, à quibuscunque tute destinantur legationes & literæ, etiam si illis ad quos deferantur molestæ sint & injuriæ. But if a foreign Ambassador being Prorex committeth here any crime, which is contra jus gentium, as Treason, Felony, Adultery, or any other crime which is against the Law of Nations, he loseth the privilege and dignity of an Ambassador, as unworthy of so high a place, and may be punished here as any other private Alien, and not to be remanded to his Sovereign but of curtesie. And so of contracts that be good jure gentium, he must answer here. But if any thing be malum prohibitum by any Act of Parliament, private Law or Custom of this Realm, which is not malum in se jure gentium, nor contra jus gentium, an Ambassador residing here shall not be bound by any of them: but otherwise it is of the Subjects of either Kingdom, &c.

Pasch. 36 Eliz. Henry de Vale and other Frenchmen imported divers manufactures, as Cloth of Tissue, Cawles, Points, &c. Whereupon Tomlinson and

* Nulli nisi absoluti principes & qui majestatis jura habent, Legatos constituere possunt. Virgil.

Item 11 Aeneid. Legati responsa ferunt ---
Idem 12 Aeneid. Nuntius hec idmon Phrygio mea dicta tyranno Haud placitura refer---

L. si. F. de Lega. In aur' de sanctiss. 1. Rerum Col. 9.

* See the third part of the Institutes, cap. High Treason, verb. Overt fact. pag. 14. Tempore H. 6.

Pasch. 36. in Scacc.

other

19 H.7. cap.21.

other good Merchants of Lond' exhibited others informations upon the Statute of 19 H.7. which prohibit the same; of whom the Frenchmen complained at the Councel Table, and it was resolved by the Lord Treasurer Burghleigh and the whole Councel, that it was no breach of the League between this Kingdom and France, for that in the Articles of the League the Laws of either Kingdom be excepted: and therefore if Tomlinson the Subject being a French Merchant should trade into France, he must observe the Laws and customs of France.

2 R.3. fol.2.

Fourthly, It was resolved, that admit the said Palache was no Ambassadoz, notwithstanding because there was enmity between the King of Spain and the King of Morocco he could not be indicted as a Pirat before Commissioners upon the said Statute of 28 H.8. Because that one enemy cannot be a felon for taking of the goods of another enemy. And the words of the said Act be, [That the Commissioners by force of the said Act shall proceed, as if the offence had been committed upon the land, and according to the course of the Common Law.]

Trin. 2 Jac. corā Rege.

See 2 R.3. by all the Justices, that this is no felony, which case is in his parts remembred hereafter. For it is very observable what the Law of England is in that case. It was holden by some of the Civilians, that albeit the Spaniard could not proceed against him criminaliter, upon the said Act of 28 H.8. yet the goods being in solo amici, that is, in the soil of the King of England, who was in league with both, that the Spaniard might proceed against Palache, civiliter in the Admiral Court: but that was resolved to the contrary by Popham Chief Justice, and the whole Court of the Kings Bench Trin. 2 Jac. to be against the Law of England in that case: where the case was this, That where the King of England was in league with the King of Spain, and with those of Holland, &c. and there was enmity between the King of Spain and those of Holland, &c. and one of Holland upon the high Sea, in aperto praelio took the goods of a Subject of Spain, and brought them into England, infra corpus comitatus, and for that the goods were in solo amici, the Spaniard whose goods were taken libelled for them civiliter in the Admiral Court. It was resolved by the whole Court of the Kings Bench upon conference and deliberation, that the Spaniard had lost the property of the goods for ever, and had no remedy for them in England. And relied principally upon the book in 2 R.3. ubi supra, being of so great authority: for by that book, he that will sue to have restitution of goods robbed at Sea, ought by Law to prove two things. First, That the Sovereign of the plaintiff was at the time of the taking in amity with the King of England. Secondly, That he that took the goods was at the time of the taking in amity with the Sovereign of him whose goods were taken: for if he which took them was in enmity with the Sovereign of him whose goods were taken, then it was no depredation or robbery, but a lawful taking, as every enemy might take of another: all which appeareth in the said book. See the Statutes of 27 E.3. any 31 H.6. well expounded in 2 R.3. ubi supra. Vide 7 E.4.14. 13 E.4.9. 22 E.3. fol.23. concerning this matter. And for that there was enmity between the King of Spain and those of Holland, therefore it could not be depredation, but a lawful taking. It was also resolved by the Court of the Kings Bench, that the goods so taken being within this Realm, viz. infra corpus comitatus, in solo amici, that if the Spaniard sue for them civiliter in the Court of the Admiralty, that a Prohibition should be granted, and that it should be determined by the Laws and Statutes of England, and not by the Civil Law.

27 E.3. cap.13. &
cap.17.
31 H.6. cap. 4.
7 E.4. fol.14.
13 E.4.9.
22 E.3.16,17.
Registr. 129.
F.N.B.114.
Prohibition
Nota.

Lib. 3. fol. 16.

With this resolution of the Kings Bench Doctor Taylor an Englishman, and Solicitor for the King of Spain, was at the first much offended, but when he had taken advice and understood the reason of the resolution, he was well satisfied.

If a shipwreck be on the Sea, yet if any of the goods come to land within this Realm, the Admiral shall not have jurisdiction, but it belongeth to the Common Law.

See the third part of the Institutes, cap. Treason: what offence it hath been, and what it is at this day to kill a foreign Ambassadoz: and see there 3 R. 2.

John

John Imperials case, Ambassador of Genoa. It appeareth in the Holy History, viz. in the first book of the Chronicles, that insury and disgraces offered to King Davids Ambassadors which he sent to Hanon King of the Moabites, Ad consolationem ei supra mortem patris sui, grandem etiam contumeliam sustinuerunt, &c. was a just cause of war by David against the Moabites, and was severely revenged, as by the Holy history it appeareth.

There be four kinds of leagues. 1. *Fœdus pacis*, and that a Christian Prince may have with an Infidel. Si fieri possit, quod ex vobis est, cum omnibus hominibus pacem habeatis. 2. *Fœdus congratulationis* five consolationis. And this may a Christian Prince make with an Infidel as David did with Hanon: ubi supra. 3. *Fœdus commutationis mercium* five commercii. And this also may be made with an Infidel, as King Solomon did with Hiram an Infidel, and Joshua did with the Gibeonites. 4. *Fœdus mutui auxilii*, and this cannot be done with an Infidel or an Idolater. Jehosaphat King of Juda, made fœdus mutui auxilii with Achab King of Israel, an Idolater: For Achab said to Jehosaphat, Veni mecum in Ramoth Gilead. Cui ille respondet, Ut ego & tu, & sicut populus tuus, sic & populus meus tecum erimus in bello: in which war Achab was slain, and Jehosaphat was in extreame danger. And after, as the Text saith, Reversus est autem Jehosaphat Rex Judæ in domum suam pacifice in Jerusalem, cui occurrit Jehu filius Hanani, & ait ad illum, Impio præbes auxilium, & hiis qui oderunt Dominum amicitia jungeris, & idcirco iram quidem Domini mereberis. And the Laws of England concerning these four leagues are as you perceive grounded upon the Law of God.

But here ariseth a question, that seeing fœdus pacis, or fœdus commercii may be stricken between a Christian Prince and an Infidel Pagan and Idolater, and those leagues are to be established by oath, whether the Infidel or Pagan Prince may swear in that case by false gods, seeing he thereby offendeth the true God by giving divine worship to false gods. This very doubt was moved by Publicola to S. Augustine, who resolveth the same thus: he that taketh the credit of him that sweareth by false gods not to any evil but god, he doth not joyn himself to that sin of swearing by Devils, but is partaker with those lawful leagues wherein the other keepeth his faith and oath. But if a Christian should any way induce another to swear by them, herein he should grievously sin. And seeing the leagues in these cases are warranted by the word of God, & per praxin sanctorum in sacra scriptura, all incidents thereunto are permitted: for per praxin sanctorum the practise of holy men in Scripture, may oftentimes be collected how the Commandments in it are to be understood, and praxis sanctorum appeareth before.

And it is to be observed that of ancient time, and until latter days no Ambassador came into this Realm before he had a safe conduct. For as no King, &c. can come into this Realm without a license or safe conduct, so no Prorex, &c. which representeth a Kings person can do it. For safe conducts see the Writs in the Register de salvo conductu, and the Statutes of 15 H. 6. 18 H. 6. and 20 H. 6. with all incidents thereunto. And King H. 7. that wise and politic King would not in all his time suffer Lieger Ambassadors of any foreign King or Prince within his Realm, nor he any with them, but upon occasion used Ambassadors.

* Every Ambassador ought to have four qualities, expressed in this Verse.

Nuncie, sis verax, tacitus, celer, atque fidelis.

And of him another saith,

Fœderis orator, pacis via, terminus iræ.

Semen amicitiae, belli fuga, litibus hostis.

William de la Poole Duke of Suff. by the Commons was charged (amongst other things) with this, that he procured the King, in his presence only with out any other of the Council, to have secret conference with the French Ambassadors, &c. for the which (amongst other things) he was banished, &c. as by the Record appeareth.

Cardinal

1 Chro. 19.2. &c.

Rom. 12.18. Gen. 14.13. &c. Abrah. cum Rege Sodom.

Joshua cap. 9. 2 Kings 5.1. &c. & 34.35. 2 Chron. 18. Jerem. 15.4. See 1 Mac. 8.19. 20. & cap. 10. 2 Chron. 19.2. & cap. 20.35. &c. * The Prophet of God.

Aug. Epist. 154. ad Publicolam.

August. lib. de mendacio c. 2.15. Praxis sanctorum interpretes preceptorum.

Rot. Parl. 9 H. 6. nu. 12. and long after. See lib. 7. Calvins case, De rege Manne. Regist. fol. 25,26. 15 H. 6. cap. 3. 18 H. 6. cap. 8. 20 H. 6. cap. 1. 8 H. 7. f. 10. Legate of the Pope sworn &c.

* Four qualities ought to be in an Ambassador.

Rot. Pl. 28 H. 6. nu. 28.

1 Decemb. 21 H.8.

See these Articles
before in *hac ver-*
ba, Cap. Chancery,
Artic' 2, 3, 9, 10, 12

Cardinal Wolsey was charged with these notable high and grievous offences (amongst others) viz. that he being the Kings Ambassadors in France made a treaty with the French King for the Pope, the King not knowing any part thereof nor named in the same, and binding the French King to abide his order and award, if any controversie or doubt should arise between the said Pope, and the said French King.

Also that the said Lord Cardinal being the Kings Ambassador in France sent a Commission to Sir Gregory de Cassalis under the Great Seal in the Kings name to conclude a treaty of amity with the Duke of Ferrare without the Kings commandment or warrant, nor the King advertised nor made privy to the same.

Also the said Lord Cardinal taking upon him otherwise then a true Privy Counsellor ought to do, hath used to have all Ambassadors to come first to him alone, and to hear their charges and intents, &c.

Also the said Lord Cardinal used many years together not only to write to all the Kings Ambassadors in foreign parts with other Princes in his own name all advertisements concerning the Kings affairs being in their charge, and in the same letters wrote many things of his own mind without the Kings pleasure known, concealing divers things which had been necessary for them to know, but also caused them to write their advertisements to him, and of the same letters he used to conceal, for the compassing of his purpose, many things both from the Kings Council and the King himself.

The difference between a League and a Truce is, that a Truce is a cessation from war for a certain time: a League is an absolute striking of peace.

a A Truce. Rot.
Franc' 19 E. 3.
m. 10. part 1.

b See the truce at
large, L. Par. fol. 5.

a If a Truce we have read in anno 19 E. 3. to this effect. Rex post initas inducias cum Francorum Rege per mediationem b Romani Pontificis, copias suas bellicas demum reduxit, postea deprehendens præfati Regem Franc' hostilia contra ipsum moliri, & nuntios præfati Pontificis simulata pace diffidium fovere, præmissa omnia per Literas Patentes exponenda duxit, & bellum cum præfato Rege resumit.

c A League. Rot.
Par. 4 H. 5. nu. 14.

d 9 E. 4. 2. a.

e 39 H. 6. 39.

f Rot. Par. 35 E. 5.
part. 2. m. 24.

Clauſ. 10 H. 4. m.

15. nuntius Pape.

Rot. Clauſ. 14 H. 3.

m. 7. Rot. Clauſ.

12 R. 2. m. Dorſ.

g Rot. Pat. 17 R. 2.

part. 1. m. 23.

Rot. Franc. 12 H. 6.

m. 2. Rot. Pat. 12 H.

6. 12 part. m. 6.

* Robert Gilbert

Doctor of Divinity

John Langdon

Doctor of Divinity

died at this Coun-

cel. *Nicolaus Ab-*

bas Glaston, williel.

Abbas beata Mariæ

Eborum.

The letters of the

Pope whereby ge-

neral Councils

are called, you

may read in Mat.

Par. Anno Dom.

1245. pag. 286.

c A League and alliance was made between King H. 5. his heirs and successors, and Sigismund King of the Romans his heirs and successors Kings of the Romans, and was confirmed by Act of Parliament. The instrument whereof is very long, but not so long as effectual and worthy of observation.

d It is said in 9 E. 4. that a League made between two Kings (without naming of successors) doth not extend to successors, although by our Law Rex non intermoritur.

e Justice Alton is of opinion, that no Ambassador ought to be sent to the Pope, but there may be many presidents to the contrary, for besides his spiritual jurisdiction he is a Temporal Prince, whereof see a president among many others, f Rot. Pat. 35 E. 3. parte 2. m. 24. and likewise the Pope sent Ambassadors into England, who were sworn not to attempt any thing prejudicial to the King or Kingdom.

g And that we may give some taste of every kind: In times past the King of England sent Ambassadors to general Councils, as taking one example of that sort for many. Ad concilium Basilien' sub Eugenio Papa, quorum destinati sunt per Regem Ambasiatores & Oratores Episcopi Robertus London', Philippus Exoniens', Johannes Rossens', Johannes Baiocens' & Bernardus Aquarens' Edwardus comes Moriton, Abbates Glaston' & beata Mariæ Eborum, Prior Norwici, Henricus Bromflet miles, (Dominus Vesciæ) Thomas Browne legum Doctor, Decanus Sarum, Johannes Colleville miles, & alii. Their authority was in these words. Dantes & damus eis & ipsorum majori parti potestatem & mandatum tam generale quam speciale nomine nostro & pro nobis in eodem concilio interfessendi, tractandi, communicandi, & concludendi tam de hiis quæ reformationem Ecclesiæ universalis in capite & in membris, quam in hiis quæ fidei orthodoxæ fulcimentum, regumque ac principum pacificationem concernere poterint, nec non de & super pace perpetua, guerramve abstinentia inter nos & Carolum

Carolus adversarium nostrum de Francia, ac etiam tractandi, communicandi, & appunctuandi, consentiendi insuper, & si opus fuerit, dissentiendi hiis quæ juxta deliberationem dicti concilii inibi statui, & ordinari contigerit. Promittentes & promittimus bona fide nos ratum, gratum, & firmum perpetuo habiturum totum & quicquid per dictos Ambassiatore, Oratores, & Procuratores nostros, aut majorem partem eorundem actum, factum, seu gestum fuerit in præmissis, & in singulis præmissorum, & hoc idem cum de & super iis certiorati fuerimus quatum ad nos & Christianum principem attinet, executioni debitæ curabimus demandare. In cujus rei testimonium has literas nostras fieri fecimus patentes. Dat' sub magni sigilli nostri testimonio in Palatio nostro Westm' 10 die Julii.

We have exprested this Ambassage the more particularly, for that, to this Council also I find that Henry Beauford (Son of John of Gaunt by Katherine Swinford) Bishop of Winchester and Cardinal of S. Euseby addressed himself and had license to transport and carry with him 20000 l. of Gold and Silver (mute but moving Ambassadors) notwithstanding the Statutes of 9 E.3. cap.1. and 5 R.2. cap.2. &c. For the form of a safe conduct (which is called de salvo conductu) see the Register. And for the effect and validity thereof, see the Statutes of 15 H.6. cap.3. 18 H.6. cap.4. 20 H.6. cap.1.

Recordum & process' contra Petrum de Rival Thesaurarium & Camerarium totius Angliæ & Hiberniæ, & custod' omnium Forestarum & omnium Portuum maris, &c. de compoto regi reddito de officiis prædictis & de judicio contra ipsum reddito per defaltam, quia venire recusavit, nisi salvo regis conductu, quod rex denegavit quasi insolitum & indebitum.

What reward Legats have had in former times you may read Rot. Liberat. 11 H.3. m.13. Rot. Claus. 11 H.3. m.11. in Dorf. Rot. Liberat. 3 E.1. m.9. Eodem Rot. 1 E.1. m.2. Rot. Alman. 11 E.3. per totum Rotulum.

See Beda in his History of England, Lib.1. cap.11. hereafter Cap. 75. Of Scotland, in fine, the danger of unwise and incertain Leagues.

Rot. Pat. anno
11 H.6. parte 1.
m.10. & 12. &
anno 12. parte 2.
m.13.
9 E.3. ca.1.
5 R.2. ca.2.
Safe conduct.
Reg. fo. 25, 26.

Anno 18 H.3.

CAP. XXVII.

The Court of the Justices of Assise, and Nisi Prius.

Glanvill lib. 13.
cap. 32, 33, &c.
Bract. lib. 4. fo.
164. b.
Britton fo. 106. b.
112. 118.
Fleta li. 4. cap. 1.
& 5. Mirror ca. 2.
§. 15.
Stat. Wallie in
Ver. Mag. Cart.
2 part fo. 12.
26 Ass. pl. 24.
* F. N. B. 177. Reg.
See the 1 part of
the Inst. Sect. 442.
Mag. Cart. cap. 30.
39 H. 6. 19. b.
Mord.
When Justices of
Assise by Patent
first began.
† The Patent of
the Justice of As-
sise.
a *Justic' nostras ad
Assisas.*
Hereunto belong
Commissions of
Associat', Writs of
admittance, and
of *si non omnes,*
&c. F. N. B. 177.
Register: and a
Writ to the Sher-
riff to bring be-
fore them *omnia
brevia Assis' Jurat'
& Certificat', &c.*
b *Jurat'* when the
recognitors are
turned in *juratam.*
19 E. 2. Ass. 418.
29 Ass. p. 78, &c.
c Certificat. hereof
you may read in
F. N. B. and the
Register.
d Nota.
e W. 2. ca. 25.
f W. 2. cap. 30.
Vid. 4 E. 3. cap. 2.
g Rot. Par. 21 E. 1.
Rot. 3. De Justici-
ariis assignatis.

For the Writ of Assise, whereof the Justices take their name; in all an-
cient Authors, it is called Assisa novæ disseisine, or Petit brief de novel dissei-
sin. Of which Writ Bracton saith: Recognitio Assisæ novæ disseisine multis
vigiliis excogitata & inventa fuit recuperandæ possessionis gratia, ut per summariam
cognitionem absque magna juris solennitate, quasi per compendium, negotium ter-
minetur. And the Mirror saith, that for expedition of Justice, and ousting of de-
lays, it was ordained by Ranulph de Glanvil; but I find the Writ more ancient,
as it appeareth in 26 Ass. pl. 24.

At the Common Law Assises were not taken but either in * Bank, or before
Justices in Cire, and this was a great delay to the Plaintiff, and a great mo-
lestation and veration of the recognitors of the Assise. For remedy whereof, it
is enacted by the Statute of Magna Carta. Quod recognitiones de nova disseisina,
& de morte antecessoris non capiantur nisi in suis propriis comitatibus, & hoc mo-
do nos si extra regnum fuere Capitales Justiciarii nostri, mittent Justiciarios nostros
per unumquemque comitatum semel in anno, qui, &c. capiant comitatibus illis
Assisas prædictas. By force of this Act, these three conclusions are to be obser-
ved. First, that no Assise can be returnable in the Kings Bench, or Com-
mon Bench, unless the disseisin be done in the County where the Benches sit
respectively, or if both Benches sit in one County, then the Plaintiff hath ele-
ction to make it returnable in which Bench he will. Secondly, that the Justices
of both Benches in that case have Jurisdiction originally and ordinary without
any Patent. Thirdly, that upon the said Act of Magna Carta Letters Patents
to Justices of Assise were framed for the taking of Assises in the proper Counties
in these words.

† Rex, &c. dilectis & fidelibus suis R. M. uni Justic' suorum de Banco, & J. L.
uni Justic' suorum ad placita coram nobis tenend' assign Salutem. Sciatis quod con-
stituimus vos Justiciarios nostros una cum hiis quos vobis associaverimus, ad om-
nes a Assisas, b Jurat', c certificat' coram quibuscunque Justic' tam per diversa breviam
domini Johannis nuper regis Angliæ patris nostri, quam per diversa breviam nostra
in Com' nostris South', Wiltel. Dorset. Somersét, Devon & Cornub. ac in civitate
Exon' arranian' capiend'. Et ideo vobis mandamus, quod ad certos dies & loca quos
vos ad hoc provideritis, Assis', Jurat' & certificat' illas capiatis; d Faciuri inde quod
ad justitiam pertinet secundum legem, & consuetudinem regni nostri Angliæ. Salvis
nobis amerciamentis inde proveniē. Mandavimus enim Vicecomitibus nostris com'
& civitat' prædict', quod ad certos dies & loca quos eis scire faciatis Assis', Jurat' &
certificat' illas una cum brevibus origin' & omnibus aliis ea tangen' coram vobis ve-
nire fac'. In cujus rei testimonium, &c.

e By this Writ the seisin and possession was recovered, and became most fre-
quent, quia non est aliud breve in Cancellaria, per quod quærentes habent tam festi-
num remedium, quam per Assisam. f And after the Statute of W. 2. was made,
and thereby it was provided, quod assignentur duo Justiciarii jurati, coram quibus,
& non aliis, capiantur Assisæ, &c. ad plus ter per annum.

g Dominus rex, &c. præcipit, quod de cætero assignentur Octo Justiciarii cir-
cumspècti & discreti ad Assisas, Jurat' & certificat' capiend' per totum regnum
Angliæ, viz. and divideth the Realm into eight parts, and to every part assign-
eth two Justices.

But divers Acts of Parliament have given unto Justices of Assise authority in many cases.

b Per lestatut' de finibus ca. 3. Justiciarii ad Assisas capiendas assignati deliberent Gaolas in com' illis tam infra libertates quam extra de prisonariis quibuscunque.

c Appeals of murder, robbery and rape may be commenced before Justices of Assise. *d* Power given to Justices of Assise to try the appeals of Approvers.

e Justiciarii ad Assisas capiend' assignati non compellant Juratores dicere precise. *f* Justices of Assise shall enquire for non-returning, and false returns of Sheriffs.

g Justices of Assise may hear and determine of Conspirators, false Informers, and wicked procurers of dozens, Enquests and Juries at the complaint of any without Writ, and without delay, and of confederacies and Champerties and maintainers, bearers, and alliances by bond, &c. *h* Of defaults of Sheriffs, Cheatores, Baylies, and other Officers.

i Justices of Assise may enquire of defaults, &c. of punishment of Writualers, &c. which sell at unreasonable prices.

k They have power to hear and determine riding and going armed, &c. and to punish Justices of Peace, Sheriffs, Baylies, and others for not doing their office in that case.

l They may hear and determine Treason in counterfeiting of money, &c.

m They shall do execution of the Statute of 13 H. 3. of riots done in their presence upon pain of an hundred pound. *n* And by the Statute of 2 H. 5. Commissions shall be awarded to enquire of the default of Justices of Assise, and of Justices of Peace in that behalf.

o They shall enquire of, hear, and determine all offences contrary to the Statute of 23 H. 6. concerning Sheriffs, Under-Sheriffs, and their Clerks, Coroners, Stewards of Franchises, Bailiffs, and keepers of prisons for extortion, and for letting to bail such as were not bailable, or for denying of bail to them that ought to be bailed, &c.

p Justices of Assise shall take bail of him that is acquitted of murder within the year to answer to the appeal of the party; 5 Eliz. cap. 5. Of Informers. 5 Eliz. cap. 4. Of Labourers.

q Justices of Assise, of Gaol-delivery, and of the Peace, shall enquire of the default of Coroners.

r Justices of Assise, &c. shall enquire of false making of Leather. *s* Of amending of High ways. *t* Of hunters in Parks. *u* Of unlawful taking of Fishes. *x* Of forgery of false deeds. *y* Against deceit in Linnen cloth. *z* Against perjury. *** Of usury, and many other things.

a Justices of Assise twice in the year ought to proclaim the Statute of 32 H. 8. and other Statutes against unlawful maintenance, champerty, imbracery, and unlawful receyners. *b* They ought to proclaim the Statute of unlawful games in their circuit. See the Custom of Normandy, cap. 19.

c Now concerning Justices of Nisi prius, they were first instituted by the Statute of W. 2. of issues joyned in the Common Bench, and Kings Bench: and their authority is annexed to the Justices of Assise and is by force of a judicial Writ, and therefore we have joyned them under one title. And this appeareth in the judicial Writ of Nisi prius, which is,

authority of Justices of Nisi prius, in libro meo, fo. 54. b. the Pl. begun, Et auxint en Nisi prius grant devant Stouf.

Rex Vicecomiti Salutem. Precipimus tibi quod venire fac' coram Justiciariis nostris apud Westm. in Octab. Sancti Michaelis, vel coram Justiciariis nostris ad Assisas in com' tuo per formam Statuti nostri inde provis' capiend' assignatis, si prius die lune prox' ante festum, &c. apud, &c. venerint 12. tam milites quam alios, &c.

And by the said Act the Justices of Nisi prius have power to give Judgment in Assise of Darrein Presentment and Quare Impedit.

b 27 E. 1. Stat. de Finibus cap. 3. To deliver Gaols.

c 22 E. 4. 19. *d* Stat. de Appel-latis. an. 128 E. 1.

e W. 2. cap. 30. *f* W. 2. cap. 39. *g* 2 E. 3. cap. 5.

h Artic. sup. Car. 28 E. 1. 4 E. 3. c. 11. 7 R. 2. c. 15.

i Regist. 186. 188. *k* 4 E. 3. ca. 12. Of Maiors and Bay-liffs, que ne s'iriche wint.

l 20 E. 3. ca. 6. *m* 23 E. 3. cap. 6. *n* 2 E. 3. ca. 3. de Northampton.

o 1 R. 4. ca. 7. Of unlawful maintenance. *p* 13 H. 5. ca. 7.

q 13 H. 4. cap. 7. *r* 2 H. 5. cap. 8. *s* 23 H. 6. ca. 10.

t 33 H. 8. ca. 9. for shooting. *u* 3 H. 7. cap. 1.

v 1 H. 8. 8. ca. 7. *w* 18 E. 1. cap. 9. *x* 18 E. 1. cap. 10.

y 5 E. 1. cap. 3. *z* 5 E. 1. cap. 5. *** 5 E. 1. cap. 14.

a 3 E. 1. cap. 9. *b* 13 E. 1. cap. 8. *c* 13 H. 8. ca.

d 33 H. 8. ca. 9. *e* W. 2. c. 30. See the 2 part of the Infl. the exposition of this Act.

f Vid. Fleta l. 4. c. 5. *g* Vid. Hil. 32 E. 3. m. 5. see the au-

thority of Justices of Nisi prius.

h Writ of Nisi prius.

i Reg. judic 48. 75. W. 2. ca. 30. 6 E. 6. Dier 77.

7 R.2. ca. 7.

By the Statute of 7 R.2. Nisi prius shall be granted as well in the Exchequer as elsewhere.

18 El. ca. 12.

12 E.3. ca. 3. & 4.

2 E.3. ca. 16. &

4 E.3. cap. 2.

14 E.3. ca. 16.

Of issues joyned in the Kings Bench, Common Bench, and Exchequer, the Chief Justices, or Chief Baron, or in their absences two other Justices or Barons of the said several Courts, as Justices of Nisi prius for the County of Midd. within the Terme, or four days after shall severally try, &c. and that Commissions, and Writs of Nisi prius shall be awarded, &c. It is to be observed that there is but a transcript of the Record sent to the Justices of Nisi prius.

27 E.1. de finibus.

F.N.B. 241. c.

Statut. de York.

12 E.3. ca. 3. & 4.

2 E.3. ca. 16. &

4 E.3. cap. 2.

14 E.3. ca. 16.

By the Statute of 27 E.1. de Finibus ca. 4. It is provided, Quod inquisitiones & recognitiones capiuntur tempore vacationis coram aliquo Justiciario de utroque Banco, coram quibus placitum deductum fuerit. See the Statutes of York, 2 E.3. cap. 16. 4 E.3. ca. 2. and the statute of 14 E.3. cap. 16. which statute doth provide that Nisi prius may be taken in every plea real and personal before two, so that one be Justice of one of the Benches, or the Chief Baron or Serjeant sworn, without any regard where the plea depended, and this standeth yet at this day. Vid. 42 E.3. cap. 11. 19 H.6. fol. 47. 33 H.6. fol. 14. 16 H.7. fol. 14. 5 Mariae Dier fol. 163.

Rot. Claus.

10 E.2. m. 10.

Concordatum fuit per totum concilium regis, quod nullus Vicecomes aut Coronator fiat Justiciarius ad Assisas capiend', Gaolas deliberand', transgress' audiend' & terminand', seu ad aliquod aliud officium Justic' faciend', eo quod debent esse intendentes aliis Justiciariis. Which Act is declaratory of the Common Law, for that (as by the reason yielded in the Act it appeareth) these offices be incompatible, the one being attendant unto, and within the controulment of the other.

F.N.B. 240. c.

Stanf. 156.

Nisi prius in case

of Felony and

Treason. 4 E.3.

cap. 11.

24 E.3. f. 23.

Rot. Par. 37 E.3.

nu. 18. F.N.B.

241. a.

b 10 E.4. fo. 14.

22 E.4. 18. 3 Mar.

Dier 120, 121.

131.

c See the 2 part of

the Inst. upon this

Act of W.2. ca. 12.

d 27 E.1. Stat. de

finibus. cap. 4.

Regist. 185.

14 H.6. cap. 1. Justices of Nisi prius have power in all cases of Felony and Treason to give judgment as well where the prisoner is acquitted, as where he is attainted, and to award execution.

a Where the King is a party, a Nisi prius may be granted, if the Kings Attorneys assent unto it.

In Appeal of murder, robbery, and rape brought in the Kings Bench, if the parties be at issue a Nisi prius may be granted before Justices of Assise. 25 E.3. 30. 14 E.3. Nisi prius 16. 22 E.4. 19. 21 H.7. 36. 9 El. Dier 261. 42 E.3. c. 11. 8 H.5. 6. b But it is to be observed, that if the Appellor be acquitted before Justices of Nisi prius, they have power to acquit, &c. and give judgment, as is aforesaid.

c They may also enquire and judge of the abettors and damages by the Statute of W.2. cap. 12. and not by the said Act of 14 H.6. And so it is if the Appeal be brought before the Justices of Assise, they have also power to enquire and judge, Ut supra.

d These Justices of Nisi prius were instituted for two causes, viz. 1. Propter intolerabilem iacturam Juratorum, & in exonerationem Juratorum. 2. Ad celerem justitiam in ea parte exhibendam.

Inquisitiones & Jurat in placito terræ capiend' quæ magnæ non sunt examinationis, capiuntur in patria, &c.

And hereupon a Prohibition is grantable to Justices of Assise, Quod non caperent in patria inquisitiones quæ magna indigent examinatione.

By the original institution of Justices of Assises and of Nisi prius, the trial should be before two at the least, and it were much for the advancement of Justice and right to have the Law put in execution, for plus vident oculi, quam oculus, and specially in Pleas of the Crown concerning the life of man, in regard whereof they shall be worthy of greater allowance.

Before the Justices of Assise in pays a forain plea, viz. Villenage was pleaded, for trial whereof the Record was removed into the Common Bench, and there a Venire fac' was awarded, and retorne, servie, and a Habeas corpus with a Nisi prius was prayed. And it was objected that the issue was not joyned in Bank, nor Judgment to be given there, and yet in the end the prayer was granted as

W.2. cap. 30.

Regist. 186.

14 E.3. ass. Br.

413. & the Ass.

Fitzh. 110.

Dier Manuscript.

Hil. 11 Eliz.

26 Ass. p. 3.

CAP. XXVIII.

Justices of Oier and Terminer.

For general Com-
missions, see
42 Aff. pl. 5. 2 R. 2.
Cor. 47. Pl. com.
390. Countee de
Leic. case.

The authority of Justices of Oier and Terminer is by Commission. Of Commissions of Oier and Terminer there be two sorts, one general, so called because it is general, in respect of the persons, the offences, and the places where the offences are committed, the which Commission followeth in these words.

Hereupon they
are called Justices
of Oier and Ter-
miner.

Elizabeth Dei gratia Angliæ, Franciæ & Hiberniæ Regina, fidei defensor, &c. Charissimis consanguineis suis Willielmo Marchioni Winton, Henrico Comiti South, &c. ac dilectis & fidelibus suis Rog' Manwood uni Justic' suorum de Banco, Johan' Jefferay uni Justic' ad placita coram nobis tenend' assign', Johan' Arundell militi, &c. Johan' S. John, Humf. Walrond, Will. Pool, Petro Edgecombe, Thomæ Morton, &c. Salutem. Sciatis quod assignavimus vos & tres vestrum, quorum aliquem vestrum vos prefat' Rogerum Manwood & Johan' Jefferay unum esse volumus Justiciarios nostros ad inquirendum per sacramentum proborum & legalium hominum de com' nostris South Wiltes. Dorset, Somerset, Devon. & Cornub. & eorum quolibet ac aliis viis, modis, & mediis quibus melius sciveritis, aut poteritis tam infra libertates quam extra, per quos rei veritas melius sciri poterit de quibuscunque prodicionibus, misprisionibus prodicionum, insurrectionibus, rebellionibus, murtheris, felonis, homicidiis, interfectionibus, burglariis, raptibus mulierum, congregationibus, & conventiculis illicitis, verborum prolationibus, coadjutationibus, misprisionibus, confederationibus, falsis allegantiis, transgressionibus, riotis, rontis, retentionibus, escapiis, contemptibus, falsitatibus, negligentis, concelamentis, manutentionibus, oppressionibus, cambipartiis, deceptionibus, & * aliis malefactis, offensis, & injuriis quibuscunque, nec non accessar' eorundem infra com' predict' & eorum quemlibet, tam infra libertates, quam extra per quoscunque & qualitercunque habit', fact', perpetrat' sive commiss'. Et per quos vel per quem, cui vel quibus, quando, qualiter, & quomodo, ac de aliis articulis & circumstantiis premiss'. & eorum aliquod vel aliqua qualitercunque concernen. Et ad easdem prodiciones & alia premissa (hac vice) audiend. & terminand. secundum legem & consuetudinem Regni nostri Angliæ. Et ideo vobis mandamus quod ad certos dies & loca quos vos vel tres vestrum, quorum aliquem vestrum ex vobis prefat. Rogerum Manwood & Johannem Jefferay unum esse volumus, ad hoc provideritis diligenter super premissis faciatis inquisitiones, & premissa omnia & singula audiatis & terminetis, ac ea faciatis & expleatis in forma predicta, * facturi inde quod ad Justitiam pertinet secundum legem & consuetudinem Regni nostri Angliæ. Salvis nobis amerciamentis & aliis ad nos inde spectantibus. Mandavimus enim Vicecomitibus nostris com' predict' quod ad certos dies & loca, quos vos vel tres vestrum, quorum aliquem vestrum ex vobis prefat. Rogerum Manwood & Johan' Jefferay unum esse volumus, eis scire feceritis venire fac' coram vobis, vel tribus vestrum, quorum aliquem

* Nota, These
general words.

* Nota.

aliquem vestrum vobis presat' Rogerum Manwood & Johan' Jefferay unum esse volumus, tot & tales probos & legales homines de balivis suis tam infra libertates, quam extra, per quos rei veritas melius sciri poterit & inquiri. In cujus rei testimonium has literas nostras fieri fecimus patentes. Teste me ipsa apud Westm' 27 die Junii An. Regni nostri decimo octavo.

2. Particular Commissions of Oyer and Terminer so called in respect of the persons of the offences, or of the places, whereof you shall find five presidents in the Register: * 1. Against the Bishop of Winchester and his Ministers. 2. De nave fracta, if the goods ought to be taken for wreck. 3. Of others oppressions, &c. extortions, &c. by the Kings Ministers. 4. Of Oyer and Terminer for the Prior of Daventry. And 5. For the King in time of vacation, which you may read there.

a Concerning Commissions of Oyer and Terminer Ten Conclusions are to be observed. 1. That Oiers and Terminers shall not be granted, but before the Justices of the one Bench or the other, or the Justices errant, and that for great or horrible trespasses, of the Kings especial grace, according to the Statute in the time of his b Grandfather.

c And in the Register there is a Superfeudas, Quia non enormis transgressio, which word [enormis] is in the Statute of W. 2. ubi sup. d To Commissioners of Oyer and Terminer a Writ of Superfeudas was delivered, Quia enormis transgressio non est, ideo superfeudeant, for it was not but for cutting down of Trees. e And afterward a Writ of Procedendo under the Great Seal of later date was delivered to them to proceed secundum legem & consuetudinem Angliæ non obstante aliquo mandato, &c. by vertue whereof, notwithstanding the former Writ, they did proceed by advice of all the Justices. For a Writ of Superfeudas is one thing, and an absolute repeal or countermand of the Commission it self is another. A Superfeudas is but to stay, or forbear the proceedings, * that is, superadvisamentum federe, and is not mesun surcesse de advisement. And such may the cutting down of trees be, as it may be enormis transgressio, and therefore notwithstanding a Superfeudas the cause may proceed by a Writ of Procedendo: But after an absolute repeal or countermand by the King of the Commission it self, the Commissioners cannot proceed after by force of any Procedendo, but there must be a new Commission.

The second Conclusion is, that Commissions are like to the Kings Writs, such are to be allowed which have warrant of Law and continual allowance in Courts of Justice. For all Commissions of new invention are against Law until they have allowance by Act of Parliament. f Commissions of novel inquiries are declared to be void: g Commissions to assay Weights and Measures (being of new invention) are declared to be void, and that such Commissions should not be after granted. So as a Commission is a delegation by warrant of an Act of Parliament, or of the Common Law, whereby jurisdiction, power, or authority is conferred to others. Sapiens Judicis est cogitare tantum sibi esse permillum, quantum commissum & creditum. And it is a good rule for all Commissioners to hold the like, and ever to keep themselves within their Commission.

The Commons do petition, that certain Commissions lately sent to Cities for the making of certain Boats and Buggings being done without assent of Parliament, might be repealed. The King both answer, That after conference with the Lords, reasonable answer should be made. And that these Commissions took no effect, appeareth in this, That no further complaint was thereof made, and no such Commission was ever after granted.

At the petition of the Commons, the King granted that one Bennet Wilman, who was imprisoned to answer before the Constable and Marshal of England, should be tried according to the Common Laws of this Realm, notwithstanding any Commission to the contrary. And thereupon a Writ was accordingly directed to the Justices of the Kings Bench, as there it appeareth. Of these kinds

* Regist. 125, 126, 127. F. N. B. 110, 111, 112. For particular commissions see 42 A. 1. pl. 12.

34 A. 1. p. 8. 29 E. 3. 30, 31. Rot. Clauf.

18 H. 3. m. 15. de Petro de Rival.

a 2 E. 3. c. 2. 34 E. 3. c. 1.

To be named by the Court and not the party.

See the Statute of 42 E. 3. c. 3. which extends to Enquiries. 4 H. 4. c. 9.

Vide Rot. Parl. 50 E. 3. nu. 51.

for Commissions of inquiry what persons ought to be named: so

note a diversity between Commissions of Enquiry, and of Oyer and Terminer.

b W. 2. 13 E. 1. c. 29

c Regist. 124, 125, 2 E. 3. cap. 2.

d 12 A. 1. p. 21.

Vide Br. com. 12 & Oier & Terminer. 4.

e Regist. 124, 125.

* Superfed. unde.

f 18 E. 3. cap. 1.

g 18 E. 3. cap. 4.

h 18 E. 3. cap. 1.

i 18 E. 3. cap. 4.

j 18 E. 3. cap. 4.

k 18 E. 3. cap. 4.

l 18 E. 3. cap. 4.

m 18 E. 3. cap. 4.

n 18 E. 3. cap. 4.

o 18 E. 3. cap. 4.

p 18 E. 3. cap. 4.

q 18 E. 3. cap. 4.

r 18 E. 3. cap. 4.

s 18 E. 3. cap. 4.

t 18 E. 3. cap. 4.

u 18 E. 3. cap. 4.

v 18 E. 3. cap. 4.

w 18 E. 3. cap. 4.

x 18 E. 3. cap. 4.

y 18 E. 3. cap. 4.

z 18 E. 3. cap. 4.

many moze authorizities might be cited, but let us return to our Justices of Oier and Terminer.

42 Aff. p. 12.
Vid. F.N.B. 110.b.
Regist. 125. &c.

In the Reign of E. 3. the Justices were so careful, that no innovation should creep in concerning Commissions of Oier and Terminer, that certain Justices having their authority by Writ, where they ought to have had it by Commission, though it were of the form and words that the legal Commission ought to be, John Knivett Chief Justice by the advice of all the Judges resolved, that the said Writ was contra legem. And where divers Indictments were before them found against T.S. the same, and all that was done by colour of that Writ was damned.

3 Mar. Br. Com-
missions 23.

The third conclusion is, that Justices of Oier and Terminer cannot proceed upon any Indictment, but upon Indictments taken before themselves, for their authority is, Ad inquirend, audiend, & terminand.

Vide 29 Aff. 33.

The fourth conclusion, that Justices of Oier and Terminer may upon an Indictment found proceed the same day against the party indicted. But against this there seems to be great authority: For in Kelwey fol. 159. b. it is thus said. *Mem que en brieve de Oier & Terminer, P. 9 H. 8. sur le insurrection in Londres il fuit determine clerement per tous Justices Dengleterre, que Justices d'Oier & Terminer ne puis inquire un jour, & mesme le jour determine, nient puis que Justices de Peace; mes Justices de Gaol delivery & Justices in Eire poien bien.* It may be that he that set down this case took it upon trust, for it agreeth in effect totidem verbis with the Chronicle in 9 H. 8. fol. 843. and it is erroneous in divers main points. 1. That the Oier and Terminer was by Writ, where it was and ought to be by Commission, as hath been said. 2. That Justices of Oier and Terminer cannot enquire one day, and determine in the same day, which without question they may do: for proof whereof we will cite some few Records in stead of many.

Hil. 2 H. 4. Rot. 4.

1 H. 8. Sir Richard
Empson case.
Northampton.

Thomas Marks Bishop of Carlisle before Commissioners of Oier and Terminer was indicted, tried and adjudged all in one day, for High Treason.

Die Lunæ post festum Sancti Michaelis, Anno 1 H. 8. before Filmer, Brudnell, Palmes, &c. Commissioners of Oier and Terminer, Sir Richard Empson was indicted of High Treason and tried all in one day. And we desirous to see the entry, upon not guilty pleaded, it is thus: *Ideo inter dict' Dominum Regem & dict' Rich. Empson militem in instant' diem ad horam primam post meridiem, &c. apud castrum de Northampton venerunt, &c. qui nec, &c. ad recognosc', &c. Ad quos quidem diem, horam, & castrum de Northampt' venit coram præfat' Justic' præd' Rich. Empson, &c.*

2 Dec' Anno 3 E. 6. at Westm' before Richard Lister, Edward Montague, Roger Cholmeley, Edmond Merton, William Portman, and Humphrey Browne, and other Commissioners of Oier and Terminer, Robert Bell was indicted of High Treason and tried the same day. 10 Dec' Anno 3 E. 6. before Sir William Portman and other Justices of Oier and Terminer at Reading in the County of Berks Thomas Bonham was indicted of High Treason, and tried the same day. 4 Augusti 10 Eliz. John Felton was before Commissioners of Oier and Terminer in London indicted of High Treason, and tried the same day by the advice of all the Judges of England. *a* Nota, the award in the Roll by the Justices of Oier and Terminer to the Sheriff to return a Jury is not sufficient; but there ought to be a precept to the Sheriff, under the Seals of the Commissioners for the returning of a Jury, but otherwise it is in the Kings Bench.

a And with this constant experience agreeth 4 H. 5. tit. Enquest 55.
b 22 E. 3. cor. 44. holden for no law.
c Vide *Lestatut de* 5 E. 6. cap. 14. Of Foresters, Ingrossers, and Regrators.
33 H. 8. cap. 9. Of unlawful games.
7 Eliz. Oier 236. See many Statutes wherein Justices of Oier and Terminer are expressly named.

b The third error in the said case of 9 H. 8. that Justices of Peace cannot inquire and try the same day, which without question they may, for they are special Justices of Oier and Terminer: and wherefore Justices of Oier and Terminer should not try the same day, as well as Justices of Gaol-delivery, and Justices in Cir, no sound reason can be given.

c The sixth conclusion is, that if any offence be prohibited by any Statute, and name not in what Court it shall be punished; or if the Statute appoint that it shall be punished in any Court of Record: In both these cases it may be heard and determined before Justices of Oier and Terminer. And so it seemeth to me

if

the Statute appoint the penalty to be recovered in any of the Kings Courts of Record, according to the opinion of Catlyn, Sanders, and Whiddon; for the Court of Oier and Terminer is the Kings Court of Record.

The sixth conclusion is, that the King may make a Commission of Association directed to others to joyn with the Justices of Oier and Terminer, and a Writ of Admittance to the Justices of Oier and Terminer, to admit the others into their society, which Writ is close. There is also a Writ of Si non omnes directed to the Justices of Oier and Terminer and to their Associates: the forms of all which you may read in the Register ubi supra, and in F. N. B. ubi supra. And in all these Commissions and Writs, the Justices are directed with this Rule, Facturi quod ad justitiam pertinet secundum legem & consuetudinem Angliæ, which is a true mark of a lawful Commission.

The seventh. If the Justices sit by force of the Commission, and do not adjourn the Commission, it is determined. Commissions Br. 12.

The eighth. Justices of Oier and Terminer, or Justices of Peace, cannot assign a Coroner to an approver; for it is not within the Commission of either of them, but Justices of Gaol-delivery may do it. 9 H. 4. coron. 457. Stat. pl. co. 143. c.

The ninth. Justices of Oier and Terminer shall send their Records and Process determined, and put in execution to the Exchequer at Mich. every year to be delivered there to the Treasurer and Chamberlains, &c. to keep them in the Treasury. 9 E. 3. cap. 5.

The tenth. None of these Commissioners, or of Assise, Gaol-delivery, or of the Peace, or other of the Kings Commissioners are countermanded by any new Commission, unless the new Commission be shewed unto them for so many as it is shewed unto; or that it be proclaimed in the County, or that the new Commissioners do sit and keep their Sessions by force of the new Commission, the former Commission is countermanded. 34 Ass. p. 8. L. 5 E. 4. fol. 12. 10 E. 4. fol. 7. 20 H. 7. 8. Kelwey 116. Br. Commiss. 6. 19 Eliz. Dier 355. Vi. infra pag. 169.

The Statute of 2 & 3 Ph. & M. cap. 18. for Cities or Towns Corporate being no Counties, but it extendeth not to Commissioners of Oier and Terminer.

And a right profitable Statute is made concerning this matter, viz. That no Process or suit before any Justices of Assise, Gaol-delivery, Oier and Terminer, Justices of the Peace, or other of the Kings Commissioners, shall not in any wise be discontinued by the making or publishing of any new Commission or Association, or by altering of the names of any of the said Justices or Commissioners, but that the new Justices and Commissioners may proceed in every behalf, as if the old Justices and Commissioners had still remained and continued not altered. 1 E. 6. cap. 7. * Nota, the general words.

CAP. XXIX.

The Courts of Special Justices of Oier and Terminer, of and concerning, 1. Purveyors, 2. Misdemeanors of Villains, &c. 3. Sums of money collected for houses of Correction, &c. 4. Colledges, Hospitals, and Charitable uses.

And first of Purveyors.

36 E. 3. cap. 4.
Of Purveyors.

Buyers of Victual
&c.
Takers of Car-
riage.

This Court is raised by the Statute of 36 H. 3. whereby it is enacted, That Commissions shall be made to two good men and lawful of every County, and the third to be of the Kings house. So that if any of the three come not, the two shall proceed to enquire of the behaviour and acts of the said buyers and takers, and how much the said buyers have taken and bought; and how much carriage: and to hear and determine the contempts, outrages, and trespasses in that behalf, as well at the Kings suit, as of every man that will complain of them.

These Commissions are to be granted ex merito justitie, and cannot be denied. And it is to be observed, that the action or suit given by the said Act is not popular; for either the King only is to have it, or the subject only that will complain.

And for better information to be made to the said Justices of the things aforesaid, the Steward, Treasurer, and Controller of the two Houses, (*viz.* of the King and Queen) at every Quarter or Half year, shall certifie into the Chancery the parcels taken in every Town, and of every person; and the Chancellor shall send the said Certificate to the Justices which shall be so assigned. And that this Act extend and hold place as well against the Purveyors of the Great Houses of the said two Houses, as against the buyers or takers before named.

2. Concerning misdemeanors, &c. of Villains.

1 R. 2. cap. 6.

See the Statute of 1 R. 2. cap. 6.

3. Of and for Sums of money collected for Houses of Correction, or for the Poor, &c.

39 Eliz. cap. 4.
4 Jac. cap. 7.

This Court is raised by the Statute of 39 Eliz. c. 4. as by the same appeareth, wherein this is to be observed, That their proceedings, judgments, and executions shall remain good and available in Law, without any redress to be had by suit in any other Court.

See the Second part of the Institutes the exposition of these Statutes.

4. Concerning Colledges, Hospitals, or Almes-houses, or for charitable and lawful purposes and uses.

39 Eliz. cap. 6.

It is lawful for the Lord Chancellor or Lord Keeper of the Great Seal,

Seal, and for the Chancellor of the Duchy of *Lancaster* (for lands within the County Palatine of *Lancaster*) to award Commissions under the Great Seal, or Seal of the County to the Bishop of the Diocess and his Chancellor, and to other persons of * good and sound behaviour, to enquire by the oaths of twelve lawful men, &c. as by all other good and lawful means of all and singular Colledges, Hospitals, and other places, founded or ordained for the Charitable relief of poor, aged, and impotent people, maimed Souldiers, Schools of learning, Orphans, or for such other good, charitable and lawful purposes and intents. And also of Lands, Tenements and Hereditaments, Leases, Goods and Chattels given or appointed for the like lawful and charitable uses. As also for reparation of Highways, of Bridges, and Sea banks, for maintenance of Free-Schools and Poor Scholars, and of Orphans and fatherless children, and such like good and lawful charitable uses. And to enquire of the abuses and misdemeanors, misimployments, falsities, defrauding the trusts, alienations, and misgovernments, &c. And after such inquiry made upon hearing and examining thereof to set down such orders, judgments, and decrees as the said good and charitable uses may be fully observed in full, ample, and most liberal sort, &c. Which orders, judgments, and decrees (not being contrary to the orders, statutes, and decrees of the Donors or Founders) shall stand * firm and good, according to the tenor and purport thereof: which Orders, Judgments, and Decrees are to be certified under the Seals of the Commissioners respectively, either into the Chancery of *England*, or of the County Palatine of *Lancaster*.

* No person interested, &c. to be a Commissioner.

Colledges in both Universities, of *Westm. Eaton*, or *Winchester*, and Cathedral Churches, &c. are excepted. It extends not to lands in Cities or Towns Corporate where there is a special Governor, &c.

Nor to any Colledge, Hospital, or Free-school, which have special Visitors, &c. But this exception extends not to Leases, Goods or Chattels.

* The party grieved may complain to the Lord Chancellor or Lord Keeper, or to the Chancellor of the said Duchy, for their redress therein, &c. and they have power to judge, &c. according to equity.

It is to be observed that when any Act of Parliament doth authorize the Lord Chancellor or Lord Keeper to make or grant any Commission under the Great Seal, that he may make or grant the same without any further warrant, because the King is party to the Act of Parliament, and there cannot be a greater warrant to the Lord Chancellor, &c. then the Act of Parliament.

CAP. XXX.

*Justices of Gaol-delivery.**Their Authority is by Commission in these words.*

The Commission of
Gaol-delivery.
Note, they are
called the Kings
Justices.
* Their Commis-
sion extends only
to them that are
in prison.
† Nota.

Elizabeth. &c. Dilectis & fidelibus suis A. B. C. D. &c. Salutem.
Sciatis quod constituimus, vos, tres, & duos vestrum, quorum aliquem
vestrum vos prefat' A. B. &c. unum esse volumus, Justiciarios nostros ad
Gaolam nostram castri nostri de C. de* prison' in ea exist' hac vice delibe-
rand. Et ideo vobis mandamus quod ad certum diem quem vos, tres vel duo
vestrum (quorum vos prefat' A. B. &c. unum esse volumus) ad hoc provide-
ritis, conveniatis apud castrum pred' ad gaolam illam deliberand', a factu-
ri inde quod ad justiciam pertinet secundum legem & consuetudinem Regni
nostri Angliæ. Salvis nobis amerciamentis & aliis ad nos inde spectantibus.
Mandavimus enim Vic' nostro Com' nostri M. quod ad certum diem quem
vos, tres, vel duo vestrum (quorum vos prefat' A. B. & C. D. unum esse vo-
lumus) ei scire feceritis, omnes prison'es ejusdem gaolæ & eorum attachia-
menta coram vobis, tribus, vel duobus vestrum, (quorum aliquem vestrum ex
vobis prefat. A. B. & C. D. unum esse volumus) ibidem venire fac. In cu-
jus rei testimonium has literas nostras fieri fecimus patentes. Teste, &c.

See the second
part of the Instit.
Stat. de Glouc' c. 9
b 4 E. 3. cap. 2.
17 R. 2. cap. 9.
c Thrice in the
year, and oftner
if need be.
d Nota, few but
effectual words.
e 4 E. 3. cap. 2.

b By the Law of the land, ne homines diu detineantur in prisona, but that they
might receive plenam & celerem justiciam, this Commission was instituted, and
by this Commission Gaols ought to be delivered c thrice in the year, and oftner
if need be.

Their authority is by this Commission, which consisteth in a few words. Con-
stituimus vos Justiciarios nostros ad Gaolam nostram castri nostri de C. de prisoni-
bus in ea existentibus hac vice deliberand. e These Justices ought to be, Bone
gents & sages auters que des places, &c.

Upon this authority and by Statutes given unto them, thirrien conclusions
do follow.

f 4 E. 3. cap. 2.
3 Mar. Br. Com-
missions 23.
2 R. 3. Coron. 47.

1. f Justices of Gaol-delivery may arraign any man that is in prison in that
Gaol upon an indictment of Felony, Trespass, &c. before Justices of Peace,
though it were not found before themselves, which (as hath been said) Justices
of Dier and Terminer cannot do. Justices of Peace shall deliver their Indict-
ments to the Justices of Gaol-delivery.

4 H. 5. Enquest 55.

2. They shall take a panel of a Jury retourned by the Sheriff, without ma-
king any precept to him, as Justices of Dier and Terminer (as hath been said)
ought to make. And the reason of the difference is, because a general command-
ment is made to the Sheriff by the Justices of Gaol-delivery to retourn Juries
against their coming: but if they have a special Commission, otherwise it is by
Hankeford.

2 R. 3. Coron 47.

3. They may deliver suspects for felony, &c. by Proclamation, against whom
there is no sufficient evidence produced to the Great Inquest to indict them, &c.
which Justices of Dier and Terminer, or Justices of Peace cannot do.

Pasch. 29 Eliz. co-
ram Rege inter
Apharry & Mor-
gan in Appeal.
9 H. 7. 9.
2 R. 3. Coron. 47.

4. They may inquire and take indictments of felony, &c. of prisoners before
them, & proceed upon them. And so was it resolved in an appeal of murder brought
by Apharry against Morgan, who pleaded that he was auterfoitz indicted and con-
victed of the same felony, and had his Clergy before Justices of Gaol-delivery,
& pleaded over to the felony (& the plea allowed.) And so many Justices of Dier
and

and Terminer do, which is to be observed by the judicious Reader, for both of them have authority to enquire, hear, and determine of such as be prisoners in the Gaol: and in that case they have a concurrent authority.

5. If a man be indicted before Justices of the Peace, and thereupon outlawed, and is taken and committed to prison, the Justices of Gaol-delivery may award execution of this prisoner. 15 H. 7. 5. b.

6. They may assign a Coroner to an Approvers, and make Proses against the Appeller in a foreign County.

7. * They may punish those that let men to bail or mainprise, which are not bailable by Law, or suffer them to escape.

By the Statute of 1 E. 6. it is provided in these words.

And be it, &c. That in all cases where any person or persons heretofore have been, or hereafter shall be found guilty of any manner of Treason, Murder, Manslaughter, Rape, or other felony whatsoever; for the which judgment of death should or may ensue, & shall be reprieved to prison without judgment at that time given against him, her, or them so found guilty, that those persons, that at any time hereafter shall by the Kings Letters Patents be assigned Justices to deliver the Gaol where any such person or persons found guilty shall remain; shall have full power and authority to give judgment of death against such person so found guilty and reprieved, as the same Justices before whom such person or persons was or were found guilty might have done, if their Commission of Gaol delivery had remained and continued in full force and strength.

8. Here by the judgment of the whole Parliament this conclusion doth follow, that Justices of Gaol delivery, according to the generality of the words of their Commission, may deliver the Gaol of prisoners committed for High Treason, which we prefer before any private opinion, especially concluding with a Quare.

9. a Justices of Gaol delivery shall send their Records and Proses determined, and put in execution to the Exchequer at Michaelmas every year to be delivered there to the Treasurer and Chamberlains, &c. to keep them in the Treasury.

10. b Justices of Gaol delivery may receive Appeals of robbery and murder by Will, but the Appellers must be in prison before them.

11. c To these Justices Commissions of Association, and Writs of admittance, and Si non omnes (as hath been said of Justices of Dier and Terminer) are directed.

12. d Justices of Gaol delivery shall keep their Sessions in the principal and chief Towns of the Counties where the Shire Courts of the same Counties be holden.

13. By the Statute of 2 & 3 Ph. & Mar. it is provided, That all Commissions of the * Peace or Gaol delivery to any City or Town Corporate not being a County of it self, shall stand and remain, the granting of any like Commission of the Peace or Gaol delivery in any Shire, Lathe, Rape, Riding, or Wapentake, being of a later date, to the contrary notwithstanding.

See in the Chapter of Dier and Terminer Conclusion 9. more concerning Justices of Gaol delivery. Vide 44 Ass. pl. 21.

See authorities lately granted to Justices of Gaol delivery in the Chapter next ensuing of Justices of Peace.

Stat. de Appellar.

28 E. 1.

Stanf. Pl. cor. 143. c

* 27 E. 1. Stat. De

finibus c. 3. 4 E. 3.

cap. 2. 1 & 2 Ph. &

Mar. cap. 13.

1 E. 6. cap. 7.

Treason, &c.

27 E. 1. de finib.

cap. 3.

See 28 E. 1. De

Appellaris, the

recital.

V. 2 R. 3. cor 47.

Cafe de Colinborn

Stanf. pl. cor. 57.

58. & 182. a.

a 9 E. 3. cap. 5.

14 H. 7. fol. 15. b.

b 13 H. 4. fol. 10.

Dier fol. 99.

3 H. 7. cap. 1.

Stanf. pl. cor.

c 2 E. 3. cap. 2.

d 6 R. 2. cap. 5.

2 & 3 Ph. M. c. 18.

* 11 H. 6. cap. 6.

CAP. XXXI.

Justices of Peace.

SIR Anthony Fitz-Herbert, one of the Justices of the Court of Common Pleas, and divers others have written of the Jurisdiction and power of Justices of the Peace, both in the Court of the Sessions of Peace, as without ; to whose labours I refer the Reader.

And it is such a form of subordinate government for the tranquillity and quiet of the Realm, as no part of the Christian world hath the like, if the same be duly executed.

Before the Conquest, *De pace violata.*

4 H. 7. cap. 12.

To the former Treatises are necessary to be added certain Acts of Parliament made in the 21 year of our late Sovereign Lord King James, and certain Caveats, Additions, and Observations necessary to be known. *De pace violata ; vide int' leges Alveredi, cap. 36. Edwardi cap. 6.*

But as a Preface to all that shall be said of the office and duty of Justices of Peace, we will begin with that which is enacted by the Statute of 4 H. 7. as a necessary caveat to all Justices of Peace, *viz.* The King considereth that a great part of the wealth and prosperity of the land standeth in that, that his subjects may live in surety under his peace in their bodies and goods : and that the husbandry of this land may increase and be upholden, which must be had by due execution of Laws and Ordinances, chargeth and commandeth the Justices of the Peace to endeavour them to do and execute the tenor of their Commission, the said Laws and Ordinances ordained for subduing of the premises, as they will stand in love and favour of his Grace, and in avoiding the pains that he ordained, if they do the contrary. And over that he chargeth and commandeth, that every man, what degree or condition that he be of, that let them in word or deed to execute their said authority in any manner or form abovesaid, that they shew it to his Grace ; & if they do it not, and it come to his knowledge by other then by them, they shall not be in his favour, but taken as men out of credence, and be put out of Commission for ever. And over this he chargeth and commandeth all manner of men, as well the poor as the rich, which be to him all one in due ministration of Justice, that is hurt or grieved in any thing, that the said Justice of Peace may hear, determine, or execute in any wise, that he so grieved make his complaint to the Justice of the Peace that next dwelleth unto him, or to any of his fellows, and desire a remedy : and if then he have no remedy, if it be nigh such time as his Justices of Assises come into that Shire, that then he so grieved shew his complaint to the same Justices ; and if he then have no remedy, or if the complaint be made long afore the coming of the Justices of Assise, then he so grieved come to the Kings Highness or to his Chancellor for the time being, and shew his grief : and his said Highness then shall send for the said Justice to know the cause why his said subjects be not eased, and his Laws executed. Whereupon if he find any of them in default of executing of his Laws in these premises, according to his high

high commandment, he shall do to him so offending to be put out of the Commission, and furthermore to be punished according to his demerits. And over that his said Highness shall not let for any favour, affection, cost, charge, nor none other cause, but that he shall see his Laws to have plain and true execution, and his subjects to live in surety of their lands, bodies and goods according to his said Laws, and the said mischiefs to be avoided, that his subjects may increase in wealth and prosperity to the pleasure of God.

And where the words of the said Act be: And further to be punished according to his demerits. These words are so to be understood, that he shall be punished in an ordinary course of justice by way of indictment upon this Act, for his contempt, &c. and not by any absolute power, as hath been often observed.

It is to be observed, that when Justice Fitzherbert and some others did write of the authority of Justices of Peace, the Commission of the Peace stood overburdened and incumbered with divers Statutes, some whereof were before, and some since repealed: and with some, whereas there was none such, and stuffed with many vain and unnecessary repetitions, and many other corruptions crept into it by mistaking of Clerks, &c. For amendment and correction whereof (being a matter of so great importance) Sir Christopher Wray Chief Justice of England, Mic. 32 & 33 Eliz. assembled all the Judges of England, and upon personal had of the former Commission of the Peace, and upon due consideration had thereupon, and often conferences between themselves, they resolved upon a reformation of the former, with divers additions and alterations both in matter and method, as it now standeth at this day: and there needeth yet another reformation of that also; for since that time divers Statutes then in force have been repealed, and divers have expired: as for example, All the Statutes of Liberties inquirable by Justices of Peace are repealed by the Statute of 3 Car. c. 4. saving the Statute of 1 R. 2. cap. 7. inquirable before Justices of Assize, Vide supra, p. 159. Also the Statute of 27 H. 8. c. 22. that the owner of any scite or precinct, &c. of any dissolved religious house under the value of 200 l. per annum, for the keeping of honest and continual household thereupon, and inquirable by Justices of Peace is repealed by 22 Jac. Regis c. 28. And the Statute of 13 R. 2. cap. 8. and 4 H. 4. c. 25. for taking by any Inholders in gain above a half penny in a bushel of Wares over the common price in the market, and inquirable by Justices of Peace be also repealed by the said Act of 21 Jac. Likewise the Statute of 39 El. cap. 2. concerning husbandry and tillage, which being but a probationer for a time, was discontinued 21 Jac. And the Statutes concerning houses of husbandry and tillage in 4 H. 7. 7 H. 8. 27 H. 8. 5 E. 6. and 5 Eliz. are all repealed by 21 Jac. and divers others, &c.

It is a good rule therefore for all Judges and Justices whatsoever, that have jurisdiction by any Statute, which at the first was temporary, or for a time, to consider well before they give judgment, whether that Statute have been continued or made perpetual: and if it were at the first made perpetual, whether it be not repealed or altered by any latter Statute. *Erudimini qui judicatis terram.* See in the Second part of the Institutes the Exposition upon the Statute of 22 H. 8. cap. 5.

Justices of Peace may inquire if Estrays be not shewed by Sheriffs, &c. to the party indented and totted. A necessary Law for the ease of the subject.

Concerning the nomination of Justices of Peace, see the Statutes of 12 R. 2. cap. 2. 2 H. 5. Stat. 2. c. 1. 18 H. 6. cap. 11. whereunto you may add, that before all these another Act not in print was made in 28 E. 3. as well for their nomination, as how and by whom they shall be discharged. Certain it is that he, that is named in the Commission of Peace under the Great Seal to be a Justice of Peace, is a lawful Justice of Peace.

Compare the old with the new Commission, and the reformations, additions and alterations will appear. Mich. 32 & 33 El. the Commission of the Peace reformed by all the Judges of England. 13 H. 4. c. 3. 8 H. 6. c. 4. 8 E. c. 2. &c. 27 H. 8. c. 22. 5 El. c. 2.

13 R. 2. cap. 8. 4 H. 4. cap. 25.

39 El. c. 2. 4 H. 7. c. 19. 7 H. 8. c. 1. 27 H. 8. c. 22. 5 E. 6. c. 5. 5 El. cap. 2.

42 E. 3. c. 9. W. 1. c. 19. 7 H. 4. c. 3.

Rot. Par. 28 E. 3. nu. 17. 37 E. 3. nu. 18. 50 E. 3. nu. 64.

21 Jac. Reg. c. 4.

At the Parliament holden Anno 21 Jac. Regis, there was an excellent Law made, entituled, An Act for the ease of the Subject concerning Informations upon penal Statutes. which Act for that it principally concerneth Justices of Peace, is here inserted in hæc verba as followeth.

This was the ancient and prudent policy of Parliaments (as before it hath appeared) that Justice might be administered & tried in their proper Counties and not to be drawn up to the Courts at *Westm.* for the causes in this preamble expressed. *a* Of this kind of men it was formerly truly said, *Hoc genus hominum semper vitabitur, & tamen semper in civitate retinebitur.* But this Law consisting of seven parts remedied all the former inconveniences and the abuses of these troublesome persons.

Whereas the offences against divers and sundry penal Laws and Statutes of the Realm may better, and with more ease and less charge to the subject, be commenced, sued, informed against, prosecuted and tried in the Counties where such offences shall be committed. And whereas the poor Commons of this Realm are grievously charged, troubled, vexed, molested, and disturbed by divers *a* troublesome persons, commonly called Relators, Informers, and Promoters, by prosecuting and enforcing them to appear in his Majesties Courts at *Westminster*, and to answer offences supposed by them to be committed against the said penal Laws and Statutes, or else to compound with them for the same.

But this Law consisting of seven parts remedied all the former inconveniences and the abuses of these troublesome persons.

1. For remedy whereof be it enacted by the Authority of this present Parliament, that all offences hereafter to be committed against any penal Statute, for which any common Informer or Promoter may lawfully ground any popular action, bill, plaint, suit or information *b* before Justices of Assise, Justices of *Nisi prius*, or Gaol-delivery, Justices of Oier and Terminer, or Justices of the Peace in their general, or quarter Sessions, shall after the end of this present Session of Parliament be commenced, sued, prosecuted, tried, recovered and determined by way of action, plaint, bill, information or indictment before Justices of Assise, Justices of *Nisi prius*, Justices of Oier and Terminer, and Justices of Gaol-delivery, or before the Justices of Peace of every County, City, Borough, or Town corporate, and liberty, *c* having power to enquire of, hear and determine the same within this Realm of *England* or Dominion of *Wales*, wherein such offences shall be committed, in any of the Courts, places of Judicature, or liberties aforesaid respectively, only at the choice of the parties, which shall or will commence suit, or prosecute for the same, *d* and not elsewhere, save only in the said Counties, or places usual for those Counties or any of them.

b Nota before Justices of

1. Assise.
2. *Nisi prius*.
3. Gaol-delivery.
4. Oier & Term.
5. Peace.

But the greatest care for the due execution of this Act will belong to the Justices of Peace, whereof there be many learned in the Laws.

e Note this Act giveth Justices of Peace no new power in cases where former Acts gave them none, and so of the rest

of the Justices here named. *d* So as they cannot be commenced, &c. in any of the Kings Courts at *Westminster*.

e By this branch process of Outlawry doth lye upon every popular action, a necessary clause for execution of Justice.

f This clause was added that the Kings Majesty should be bound expressly by this Act, that no information in the Courts at *Westminster* should be exhibited by the Kings Attorney general, by any common Informer, or other person whatsoever. Note the generality of these words.

2. *e* And that like process upon every popular action, bill, plaint, information or suit, to be commenced, or sued, or prosecuted after the end of this present Session of Parliament by force of, or according to the purport of this Act, be had and awarded to all intents and purposes as in an action of trespass *vi & armis* at the Common Law.

3. *f* And that all and all manner of informations, actions, bills,

plaints,

plaints, and suits whatsoever hereafter to be commenced, sued, prosecuted, or awarded either by the Attorney General of his Majesty, his Heirs, or Successors for the time being, or by any Officer or Officers whatsoever for the time being, or by any common Informer, or other person whatsoever in any of his Majesties Courts at Westminster, for or concerning any of the offences, penalties or forfeitures aforesaid, shall be void, and of none effect, any Law, Custom, or Usage to the contrary thereof notwithstanding.

4. And be it further enacted by the Authority aforesaid, that in all Informations to be exhibited, and in all Bills, Counts, Plaints, and Declarations in any Action or Suit to be commenced against any person or persons, either by, or on the behalf of the King or any other for or concerning any offence committed, or to be committed against any penal Statute, the offence shall be laid and alleged to have been committed in the said County where such offence in truth was committed, and not elsewhere: And if the Defendant to any such Information, Action or Suit, pleadeth that he oweth nothing, or that he is not guilty, and the Plaintiff or Informer in such Information, Action or Suit upon evidence to the Jury that shall try the issue, shall not both prove the offence laid in the said Information, Action or Suit, and that the same offence was committed in that County, then the Defendant and Defendants shall be found not guilty.

5. And be it further enacted by the Authority aforesaid, that no Officer or Minister in any Court of Record shall receive, file, or enter of Record any Information, Bill, or Plaint, Count, or Declaration, grounded upon the said penal Statutes or any of them, which before by this Act are appointed to be heard and determined in their proper Counties, until the Informer, or Relator hath first taken a corporal Oath before some of the Judges of that Court, that the offence or offences laid in such Information, Action, Suit or Plaint, was or were not committed in any other County, then where by the said Information, Bill, Plaint, Count or Declaration the same is, or are supposed to have been committed, and he believeth in his Conscience the offence was committed within a year before the Information or Suit within the same County, where the said Information or Suit was commenced, the same Oath to be there entred of Record.

6. And be it also enacted by the Authority aforesaid, that if any Information, Suit, or Action shall be brought, or exhibited against any person or persons for any offence committed, or to be committed against the form of any penal Law either by, or on the behalf of the King, or by any other, or on the behalf of the King and any other, it shall be lawful for such Defendants to plead the ge-

afore, specially before Justices of Peace, there are not such skillful Prothonotaries and Clerks for good pleading as were in the Kings Courts at Westminster; and therefore the makers of this Law provided that the Defendant might plead the general issue. 2. For the ease and benefit of the subject, great charges growing by special pleading. 3. For avoiding of demurrers upon strict and nice points of pleading. 4. For avoiding of Writs of Error, which often are brought in respect of special pleading.

g Note, the King expressly named.

b Shall be laid in the proper County This clause is but in affirmance of the true institution of the Common Law, for *vicini viciniore facta presumuntur scire*, and for these Informers they were best trusted wherthey were least known. This is a very beneficial clause for every Defendant to take hold of.

i That is in any of the Courts before Justices of Assize, and other Justices named in the first part of this Act.

k The Informer must take an oath before his Information, &c. be received.

A beneficial clause also for the Defendant.

l Note within a year before the Information.

Vid. 7 Jac. ca. 5.
21 Jac. cap. 12.

The reasons of this clause were, 1. For that in the Courts

neral issue, that they are not guilty, or that they owe nothing, and to give such special matter in evidence to the Jury that shall try the same, which matter being pleaded had been a good and sufficient matter in Law, to have discharged the said Defendant or Defendants against the said Information, Suit, or Action; and the said matter shall be then as available to him or them to all intents and purposes as if he, or they had sufficiently pleaded, set forth, or alledged the same matter in bar, or discharge of such Information, Suit, or Action.

Provided always, that this Act or any Clause contained therein shall not extend to any Information, Suit or Action, grounded upon any Law or Statute made against Popish Recusants, or for, or concerning Popish Recusancy, or against those that shall not frequent the Church and hear Divine Service, nor to any Information, Suit, or Action for maintenance, champerty, or buying of titles, nor to any Suit, or Information grounded upon the Statute made in the first year of the Reign of our Sovereign Lord the King, of a Subsidy granted to the King, of Tunnage, Poundage, Wool, &c. nor for, or concerning the concealing or defrauding the King his Heirs or Successors of any Custom, Tunnage, Poundage, Subsidy, Imposit or Prifage, or for transporting of Gold, Silver, Ordinance, Powder, Shot, Munition of all sorts, Wool, Woolfels, or Leather, but that such offence may be laid or alledged to be in * any County at the pleasure of any Informer, any thing in this Act to the contrary notwithstanding.

* This proviso referreth only to the County, &c. So as no Information,

&c. grounded upon any of the Statutes in this proviso mentioned can be commenced, &c. in any of the Kings Courts at Westminster, but before the Justices of Assize, Justices of Nisi prius, or Gaol-delivery, Justices of Oier and Terminer, or Justices of Peace.

There was another mischief which lay heavy upon the Subject, whereof advantage might be taken by any Informer, which was not provided for by this Act, viz. divers former Statutes, which in respect of the alteration of times lay as snares upon the people, and at this day could not be performed. For example: What a yard of broad-cloth of the finest making scarlet grained, or other cloth grained, what colour soever it be, should not be sold above the value of 16 s. a broad yard, &c. Which Act and many other Acts of Parliament of like nature, and other obsolete Laws to a very great number, were at this Parliament utterly repealed, and made void. We advise therefore the Justice of Peace (for to him we principally direct our speech, though it concern the rest of the Justices before named) seriously to read over that Act, where all those obsolete Laws are particularly mentioned and repealed, and therefore no Information, &c. can be commenced, &c. upon any of them.

At the same Parliament also Anno 21 Jac. Regis, another good and profitable Law was made concerning Justices of Peace and others, the tenor whereof is as followeth.

The Title. *An Act to enlarge and make perpetual the Act made for ease in pleading against troublesome and contentious Suits prosecuted against Justices of the Peace, Maiors, Constables, and certain others his Majesties Officers for the lawfull execution of their Office, made in the 7. year of his Majesties most happy Reign.*

Whereas an Act intituled, an Act for ease in pleading against troublesome and contentious Suits prosecuted against Justices of the Peace, Maiors,

11 H. 7. cap. 8.

21 Jac. ca. 18.

21 Jac. cap. 12.

Majors, Constables, and certain others his Majesties Officers for the lawful execution of their Office made in the seventh year of his Majesties most happy Reign of *England*, was made to continue but for seven years, and from thence to the end of the next Parliament, after the said seven years, which by experience hath since been found to be a good and profitable Law. Be it therefore enacted by the Kings most excellent Majesty, the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, that the said Act shall from and after the end of this present Session of Parliament be perpetual, and have continuance for ever.

7 Jac. Regis ca. 5.
That Act extended to 1. Justices of Peace.
2 Majors or Bailiffs of Cities or Towns corporate.
3 Headborows.
4 Portreves.
5 Constables.
6 Tithingmen.
7 Collectors of Subsidies and Fifteenths, and not to any Officer not named in that Act. Made perpetual.

And be it further enacted by the Authority aforesaid, that all Churchwardens, and all persons called Sworn-men, executing the Office of the Churchwardens, and all Overseers of the poor, and all others, which in their aid or assistance, or by their commandment shall do any thing touching or concerning his or their Office, or Offices, shall hereafter be enabled to receive and have such benefit and help by vertue of the said Act, to all intents, constructions and purposes, as if they had been specially named therein.

This Act of 21 Jac. extendeth to
1. Churchwardens.
2. All persons called Sworn-men, executing the office of Churchwardens
3. All Overseers of the poor.
4. All others in their aid and assistance, and not to any other Officer or person not named in this Act.

And whereas notwithstanding the said Statute, the Plaintiff is at liberty to lay his Action which he shall bring against any Justice of Peace, or other Officer in any forraign County, at his choice, which hath proved very inconvenient unto sundry of the Officers, and Persons aforesaid, that have been impleaded by some contentious, and troublesome persons in Countries far remote from their places of habitations.

Be it therefore further enacted by the Authority aforesaid, that if any Action, Bill, Plaint, or suit upon the case, Trespass, Battery, or false Imprisonment shall be brought after the end of this present Session of Parliament against any Justice of Peace, Maior, or Baylif of City, or Town corporate, Headborow, Portreve, Constable, Tything-man, Collector of Subsidy or Fifteens, Churchwardens, and persons called Sworn-men executing the office of Churchwarden, or Overseer of the Poor, and their Deputies, or any of them, or any other which in their aid, or assistance, or by their commandment, shall do any thing touching or concerning his or their office or offices, for or concerning any matter, cause or thing by them or any of them done by vertue or reason of their or any of their office or offices, that the said Action, Bill, Plaint, or Suit shall be laid within the County where the Trespass or Fact shall be done and committed, and not elsewhere. And that it shall be lawful to and for all and every person and persons aforesaid, to plead thereunto the general issue, that he or they are not guilty, and to give such special matter in evidence to the Jury which shall try the same, as in or by the said former Act is limited or declared. And that if upon the trial of any such Action, Bill or Suit, or the Plaintiff or Plaintiffs therein shall

This branch extendeth to
1. Actions upon the case.
2. Trespass.
3. Battery.
4. False imprisonment.

The Actions aforesaid shall be laid in the proper County.

To plead the general issue.

The Plaintiff upon the evidence must prove that the cause of Action was done or had in the proper County.

not prove to the Jury which shall try the same, that the Trespass, Battery, Imprisonment, or other Fact, or cause of his, her, or their such Action, Bill, Plaint, or Suit was, or were had, made, committed, or done within the County where such Action, Bill, Plaint, or Suit shall be laid; That then in every such case, the Jury which shall try the same shall find the Defendant and Defendants in every such Action, Bill, Plaint, or Suit, not guilty, without having any regard or respect to any evidence given by the Plaintiff or Plaintiffs therein touching the Trespass, Battery, Imprisonment, or other cause, for which the same Action, Bill, Plaint, or Suit is, or shall be brought: and if the verdict shall pass with the Defendant or Defendants in any such Action, Bill, Plaint, or Suit, or the Plaintiff or Plaintiffs therein become nonsuit, or suffer any discontinuance thereof, that in every such case the Defendant or Defendants shall have such double costs, and all other advantages and remedies, as in and by the said former Act is limited, directed, or provided.

21 Jac. ca. 14.

See also another Act the same Parliament, anno 21 Jacobi Regis, intituled, *An Act to enable Judges and Justices of the Peace to give restitution of possession in certain cases.*

1. Judges, or Justices of the Kings Bench.

4 H. 7. 18. b.

7 E. 4. 18.

2. Justices of the Peace. 8 H. 6. ca. 9. li. 9. f. 118. b. 2 H. 8. Relw. 159.

Not Justices of Oier and Terminer, nor any other Justice.

Instead of *disseisin* which was formerly in the Indictment, now it shall be said, *ejecit, expulit, & amovit, or detinuit.* This Act extendeth to

1. Tenant for years.

Be it enacted by the Authority of this present Parliament, that such Judges, Justices, or Justice of the Peace, as by reason of any Act or Acts of Parliament now in force are authorised, and enabled upon inquiry to give restitution of possession unto Tenants of any Estate of Freehold, of their Lands, or Tenements which shall be entered upon with force, or from them with-holden by force, shall by reason of this present Act have the like and the same authority and ability from henceforth (upon indictment of such forcible entries, or forcible whithholdings before them duly found) to give like restitution of possession unto Tenants for term of years, Tenants by copy of Court-rol, Guardians by Knights service, Tenants by Elegit, Statute merchant and staple of Lands, or Tenements by them so holden, which shall be entered upon by force, or holden from them by force.

See 8 H. 6. cap. 9. & 31 E. 1. cap. 11.

2. Tenant by copy, &c. 3. Guardians in Chivalry. 4. Tenant by Elegit. 5. By Statute merchant. 6. By Statute Staple, which no former Act extended unto.

In Termino Pasche. 6 E. 1. Coram rege prima fuit institutio Justiciariorum pro pace conservanda.

Rot. Parl. 18 E. 1. fo. 3. nu. 41. Homines de Cheserthire qui onerati sunt de servientibus pacis sustentandis, petunt exonerari de oneribus Statut Winton, &c. Rex non habet consilium mutandi consuetudines, nec Statuta sua revocandi.

The Lord Chancellor and others of the Privy Council do remove divers Justices of Peace for that they were retaining to the Archbishop, &c.

See a profitable and good Law for Justices of Peace in the Parliament Roll, and not in Print.

But let us return to the duty of a Justice of Peace, for Melius est recurrere quadrate currere.

One or more Justice or Justices of Peace cannot make a Warrant upon a bare surmise to break any mans house to search for a felon, or for stolen goods, for they being created by Act of Parliament have no such Authority granted unto them by any Act of Parliament: and it should be full of inconvenience, that it

Dorset. Claus. An. 8 R. 2. m. 5.

Rot. Parl. 3 R. 2. nu. 39.

Regula.

it should be in the power of any Justice of Peace being a Judge of Record, upon a bare suggestion to break the house of any person of what state, quality, or degree soever, and at what time soever, either in the day or night; upon such surmises. But if the party suspected be indicted, then the Sheriff by force of the Kings writ may demand the party indicted to be delivered; and that not done, he may break open the house, &c. and apprehend the felon, for that the Kings writ is a Non omittas propter aliquam libertatem: but if the Kings process be in debt, trespass, &c. at the suit of a party, there the Sheriff by force of the Kings writ cannot break open the house of the subject. And so is the book in 13 E. 4. fol. 9. which saith; It was holden, that for felony or suspicion of felony a man may break the house to take the felon, and two reasons are yielded in the book. 1. Because it is for the Common weal to take them. 2. Because the King hath an interest in the felony, and in such case the writ is a Non omittas propter aliquam libertatem: but otherwise it is for debt, or trespass, the Sheriff or any other cannot break the house to take him. And yet it is to be understood, that if one be indicted of felony, the Sheriff may by process thereupon after denial made, &c. break the house for his apprehension, or upon Hue and Cry of one that is slain or wounded, so as he is in danger of death, or robbed, the Kings Officer that pursueth may (if denial be made) break a house to apprehend the delinquent: but for Justices of Peace to make warrants upon surmises, for breaking the houses of any subjects to search for felons, or stolen goods, is against Magna Carta, Nec super eum ibimus, nec super eum mittemus, nisi per legale iudicium Parium suorum, vel per legem Terræ: and against the * Statute of 42 E. 3. c. 3. &c. And we hold the resolution of the Court, viz. of Brudnel, Pollard, Broke, and Fitzherbert in 14 H. 8. to be Law, that a Justice of Peace could not make a warrant to take a man for felony, unless he be indicted thereof, and that must be done in open Sessions of the Peace. For the Justice himself cannot arrest one for felony, unless he himself suspect him, (as any other may) and by the same reason he cannot make a warrant to another. And all this appeareth in that book, and is agreeable with our former books in 42 Ass. p. 5. & 12. & 24 E. 3. tit. com. Br. 3. and with reason, for this warrant to take a Felon should be in nature of a Capias for felony, which cannot be granted before indictment, nor after indictment, but in open Court. And this is the reason wherefore Justices of Peace before indictment could not have let any charged with felony or suspicion to bail, or mainprise, because Justices of Peace are Judges of Record, and ought to proceed upon Record, and not upon surmises. Sed distinguenda sunt tempora, & concordabis leges: For since the Statutes of 1 & 2 Ph. & Mar. c. 13. and 2 & 3 Ph. & Mar. c. 10. (the words whereof be, That the said Justices, or one of them being of the Quorum, when any such prisoner is brought before them for any manslaughter, or felony, shall take examination, &c.) if any person be charged with any manner of felony, and information be given to a Justice of Peace of the felony or suspicion of felony, and feareth that the Kings peace may be broken in apprehending of him, the said Justice may make a warrant to the Constable of the Town to see the Kings peace kept in the apprehending and bringing of the party charged with or suspected of the felony before him, and the party that giveth the information of his knowledge or suspicion to be present and arrest the delinquent; and in this manner it is implied and intended by the said Statutes for the prisoner to be brought before them: and this (as we take it) agreeth with the common use and observance ever since those Statutes. And this agreeth also with the said book in 14 H. 8. that a Justice of Peace may make his warrant for the salvation of the peace, meaning to assist the party that knoweth or hath suspicion of the felony. But in this case neither the Constable, nor any other can break open any house for the apprehension of the party suspected or charged with the felony, for it is in Law the arrest of the party that hath the * knowledge or suspicion, who cannot break open

13 E. 4. 9. 20 E. 4. 6. b. He may enter into the house the door being open. See lib. 5. f. 91. 92. Semains case.

7 E. 3. 16 29 E. 3. 9. 2 E. 4. 8. 9 E. 4. 26.

Mag. Car. c. 29.

* Read the Stat. 14 H. 8. fol. 16. a.

Vid. 1 R. 3. cap. 3. 3 H. 7. cap. 3. 1 & 2 Ph. & Mar. cap. 13. & 2 & 3 Ph. & Mar. c. 10.

2 H. 7. 3 & 15. 4 H. 7. 2. 3. 5 H. 7. 4. 10 H. 7. 17. 20 H.

7. 12. 7 E. 4. 20. 8 E. 4. 3. b. 10 E. 4. 17. 9 E. 4. 26. 21 E. 4. 4. 13 E. 4. 9. 7 H. 4. 35. 17 E. 4. 5. 27 H. 8. 23. a. 7 Eliz. 236. b.

* 20 E. 4. fol. 6.
17 E. 4. 5. a.
Lam. fol. 188. 189.

any house: but if the * door of the house be open, he may enter into the same, and arrest the part. Thus much upon reading of some that have written of the Office of Justices of Peace, we have thought good to add. For though commonly the Houses or Cottages of poor and base people be by such Warrants searched, &c. yet if it be lawful, the houses of any subject, be he never so great, may be searched, &c. by such Warrant upon bare surmises.

† Bail and Mainprise.

See the 2. part of the Institutes, W. 1. c. 15. fol. 472, &c. Glanv. lib. 14. ca. 1. W. 1. c. 15. 27 E. 1. stat. de finibus c. 3.

¶ Of bail and bailment.

† Concerning bailment and mainprise, and what offenders were bailable by the Common Law, you may read in the Second part of the Institutes, W. 1. c. 15. Now something is necessary to be added in respect of some variety of opinions touching the true diversity and signification of Bailment, Mainprise, Fideiuss, Surety, Pledges, Plevin, Plevina, Replevin, Borrough, and the like. And first of Bail.

Some derive this word from the French word *Bailler*, id est, Tradere, to deliver, because the prisoner is delivered out of prison; but it cannot so be derived: for the entry is, *traditur in or per ballium*, and then the sense (or non-sense) should be, he is delivered into delivery. But this word *Ballium* is truly fetched from the French *Posum Bail*, that signifieth a Guardian, Keeper or Gaoler: and herewith agreeth Bracton, who saith, *Non erit ulterius per ballium dimittendus*. And again, *Per ballium dimittatur usque adventum Justitiariorum, alioquin remaneat in prisona*; and in the same page, *tradas in ballium 12 probis hominibus*. We read not in Britton of this word *Bail*, but of some other words hereafter following. *Que plevissent corps de home ceux ne sont my proprement pledges mes sont mainpernors pur ceo que ilz supposent que ceux plevifable sont livers a eux per baile corps pur corps*.

2 Bracton lib. 3. fol. 123. And herewith agreeth the Register, fol. 133. b. Fleta lib. 1. ca. 26. Mirror c. 2. Sect. 14.

Cust. de Norm.

b 24 E. 3. 33.

25 E. 3. 42. b.

mainprise 1.

3 E. 3. cor. 354.

2 Eliz. Dier 179.

F. N. B. 246. c.

c 33 E. 3. Mainprise 12.

4 This agreeth with the former

Etymology.

e 36 E. 3. lib. 13. acc.

4 H. 6. 8. 22 H. 6. 59

32 H. 6. fol. 4. acc.

39 H. 6. 27. 21 H. 7.

33.

* Vid. infra. †

f 36 E. 3. ubi sup.

Br. Mainprise 89.

* Where bailment is called a living prison.

b A man arrested or imprisoned (and bailable) for felony shall be bailed before it appeareth whether he be guilty or no. But if a man be convicted by verdict or confession, &c. he is not bailable, because it appeareth that he is guilty. So, if upon examination a man confesseth a felony, if the *Wittimus* be for felony confessed, he cannot be bailed.

c By Shard there is a diversity between *Bail* and *Mainprise*; for the entry of the bail is, that such an one *traditur in ballium*, in which case they be his *Gardeans*: and if they suffer him to escape, they shall answer for it.

e And where it is said there, *Et per quosdam ilz terra pende*, it was spoken but in * terror, and thereupon a *Quære* is made of it. And that it was no felony in ancient time, hear what the *Picro* saith. It is abusio to think that such pain should be awarded to the *Bail*, as to the *Principals* which made default, where they were but *amerciable* in that case.

f And where any man is delivered in *Balliu*, he may safely be kept by his *Bail* for their indemnity, because the Court of Justice doth deliver him unto them to be safely kept.

The manner of the several entries of the bail is worthy of observation, because it is only attained unto by observation of presidents, and the course of Courts.

And first in case of bailment for felony by the Common Law, those that do bail him are severally bound to the King by Recognizance in a certain sum, that the prisoners shall appear at a certain day, &c. *Et ultra quilibet eorum corpus pro corpore, &c.*

21 H. 7. 20. b.

per Fincux.

F. N. B. 251. d.

See Lamb. fol. 352.

353. F. N. B. 251. f.

The bail of a felon before two Justices of the Peace, whereof one to be of the Quorum by the Statutes of 1 & 2 Ph. & Mar. & 2 & 3 Ph. & M. is for the felon in double, and for each of the bail in single. As for example, If the felon be 40 l. the bail is 20 l. a piece. And herein to observe in effect three things. 1. Ad comparandum at the next Gaol-delivery. 2. Ad standum recto de feloniam predicta. 3. Ad respondendum dicto Domino Regi, &c. So the Second part of the Institutes, the Statutes of Marlebridge, ca. 27. if the party bailed *Propter privilegium Clericale respondere noluerit, non amercientur illi quibus traditus in ballium*. There must be also a Liberate in that case to the Gaoler, if the felon be formerly committed to prison, to deliver him out of prison.

Nota, amercientur.

* Vid. supra. †

¶ Of bail and bailment.

¶ Of bail and bailment.

W. 1. c. 15.

Before the said Statutes of 3 E. 1. c. 15. 27 E. 1. c. 3. and 1 & 2 Ph. & M. cap. 13. If any person had been let to bail that was not bailable: by Law this amounteth to a negligent escape, and shall be punished as a negligent escape of a felon. Shall be, that is, to be fined at 5 l. But by the Statute of 1 & 2 Ph. & Mar. the Justices of Gaol-delivery shall in that case set what fine upon the Justices of Peace, &c. they shall think fit. Upon a Capias, and a Capi corpus returned, the entry is traditur in ballium 8 die Maii Anno 16 Regis H. 8. *Jo. Long, &c. usq' die Mercurii prok' futur', & sic de die in diem, & termino in terminum, quousq' placitum prædictum terminetur, viz. quilibet eorum corpus pro corpore.*

If A. be in custodia Marechal' in the Kings Bench, & a Bill of debt be brought against him; and the defendant find B. for his bail, B. entreteth a Recognisance to the plaintiff with this condition precedent, *Quod si contigerit præd' defendentem debitor' & damna illa præfato querenti minime solvere, aut se prisonæ Marechallicæ occasione non reddere, tunc tunc he would satisfy the same.*

Nota. In these personal actions the bail is only bound, and their Recognisance is general, and of no certain sum, as it is in case of felony: and against him that is by bail in the Kings Bench, any stranger in the same Term may sue him by Bill in any personal action; otherwise it is if he were by Mainprize & de die in diem. But if A. be outlawed in any personal action, and taken by force of a Capias Uelegatum, and plead any plea triable by the Country in avoidance of the Outlawry, as that he was commorant in another County, &c. In this case A. shall be bailed, and the entry is, *Super hoc, T. B. & B. T. manuceperunt præfat. A. habendum corpus ejus hic, &c. & sic de die in diem in quolibet diem placiti, quousq' placitum prædictum terminetur, & judicium inde redditum fuerit, viz. quilibet eorum corpus pro corpore: Et prædictus A. assumpsit pro seipso effendit tunc hic ad quolibet diem placiti prædicti sub poena 40 l. &c. si contingat ipsum A. ad aliquem diem, &c. defaultum facere, aut sectam suam in hac parte non prosequi.* Note, wheresoever the principal is bound, it is in a certain sum.

And where some do hold, that in all cases when any Statute enacteth that the body of the Delinquent shall be committed to prison at the will of the King, he cannot be let to Mainprize before the Kings will be known; The Rule is good if it be rightly understood; for he cannot in that case by force of any such Statute be imprisoned, before he be indicted, convicted, and judgment given, and then he cannot be bailed or letten to mainprize, because his offence appeareth, as hath been said.

And the case there cited in 24 E. 3. upon the Statute of 2 E. 3. c. 3. for going armed in Westm. Hall, &c. the Book saith, That Thomas Figgot Chivaler fuit armatus per Shard, &c. which proveth that he was indicted, arraigned, and legally proceeded with, neither was his armor forfeited before conviction. And note, That the said Act in that case giveth the forfeiture of his armor, and imprisonment: and therefore in that case he shall not be fined: but Sir Thomas Figgot might have been bailed before conviction.

In the next place we are to speak of Mainprize, Manu captio, which deriveth it self, and signifieth a taking into the hand.

Every bail is mainprize, (for those that are bail take the person bailed into their hands and custody) but every mainprize is not a bail, because no man is bailed but he that is arrested, or in prison: for he that is not in custody or prison cannot be delivered out, as before it appeareth. But a man may be mainprized which never was in prison, and therefore mainprize is more large then bail. As in an Appeal of felony, the defendant wage battel, &c. and a day appointed, &c. the plaintiff shall find mainprize, &c. to appear, &c. And yet he never was in prison or under custody. And sometimes these mainperners are called pledges. Also if A. be in execution for debt, &c. at the suit of T. and such a Scire fac' upon a release of the like, the Entry is, *Et super hoc prædictus A. dimittitur per manu cap' E. D. E. F. qui cum manuceperunt, ad habendum corpus ejus hic ad præfatum terminum, & sic de die in diem, &c. quousque inde judicium redditum fuerit. Et si pro prædict' T. transierit, exequatur, viz. quilibet sub poena 40 l. quas quilibet*

25 E. 3. 39. 3 E. 3. tit. cor. 40 Ass. 42. 3 E. 1. c. 15. 27 E. 1. stat. de finibus, cap. 3.

Hil. 18 H. 8. Bendl. This bail is determined by the judgment, if the judgment be then there.

21 H. 7. 45. b.

2 E. 4. 2. a. See before cap. of the Kings Bench.

Here the Bail are bound in no sum but corpus pro corpore, the principal in a certain sum.

Stanf. pl. cor. 77. b.

24 E. 3. 33. Sir Th. Figgots case.

Of mainprize.

17 E. 3. 62. 17 Ass. p. 1. 5 E. 3. 24. 32 E. 3. Mainprize 23. 29 H. 4. 3. 1 H. 6. 6. 30 E. 3. 20. 26 E. 12. 11 H. 4. 43. 12 R. 2. commance 37. 8 H. 6. 30.

blatrous words spoken since his binding, viz. for saying at one time to Edw. Kyrton Esq; Thou art a Pelter, thou art a liar, and hast told my Lord lies, and I will make thee a poor . And he was further indicted, that since the said

Recognisance, Clausum cuiusdam Johannis Wich, vi & armis fregit & intravit & averia & catalla ipsius Johannis in clausu predicto depascent' illicite vexavit & chafavit. And afterwards at another time he said to the said Kyrton, Thou art a drunken Knave: which Indictment was removed into the Kings Bench. And hereupon two questions were debated divers times both at the Bar and the Bench. First, admitting that all that is contained in the Indictment be true, whether any therein was in judgment of Law a breach of the said Recognisance. The second, for how much the said indictment was good in Law. As to the first, it was resolved, that neither any of the words, nor the trespasss, were any breach of the good behaviour, for that none of them did tend immediately to the breach of the peace, for though the said words (especially thou art a liar, &c. thou art a drunken Knave) are motives and mediate provocations for breach of the peace, yet tend they not immediately to the breach of the peace; as if William King had challenged Kyrton, or sent him a Challenge to fight with him, or had threatened Kyrton to beat or wound him, or the like: these tend immediately to the breach of the peace, & therefore are breaches of the Recognisance of the good behaviour. And this diversity was justly collected upon the coherence and context of the statute of 34 E.3. whereby Justices of Peace are assigned for keeping of the Peace, and to restrain the Offenders, Rioters, & all other Warritors, and to chastise them according to their trespasss and offence; and to enquire of Pillors and Robbers, in the parts beyond the Seas, and he now come again, and go wandring and will not labour, &c. (And thus much for punishment of offences against the peace after they be done: now followeth an express authority given to the Justices, for prevention of such offences before they be done.) viz. * And to take of all them that be not of good fame, (that is, that be defamed and justly suspected that they intend to break the peace,) where they shall be found sufficient surety and mainprise of their good behaviour towards the King and his people (which must concern the Kings peace, as is also provided by the word subsequent) to the intent that the people be not by such Riotors troubled nor indamaged, nor the peace blemished, nor Merchants nor other passing by the Highways, disturbed, nor put in the peril that may happen of such offenders. For the trespasss, &c. Although every wrongful trespasss is quare vi & armis & contra pacem, yet these force and arms, or contra pacem implied in Law are not taken to be such as shall make a breach of the good behaviour; because they are trespasss upon the land, or touching goods or chattels, and not the person of a man.

As to the second point it was holden, that the Indictment concerning the words was void and coram non iudice, and good only for the trespasss, quare clausum, &c. But if there be any just cause of breach, he ought to have a Scire fac' upon the Recognisance. 21 E.4.10.

In an Account, if a Capias ad computand' be awarded against the defendant, and thereupon he is outlawed, and rendreth himself to the prison of the Fleet, and Auditors be assigned to him, before whom they be at issue, and the Auditors bring the Record into the Common Pleas, and the defendant found surety in 200 li. to appear in proper person every day pendente placito; and if the issue pass against him, that he rendreth himself to prison. 21 H.6.26.

* A fine sur conuance de droit was levied to an Infant, and because the Infant ought to pay the fine to the King, he found securitatem de fine solvendo.

There is also a Writ De securitate pacis, & de bene gerendo.

b In homine replegiando the defendant avows for that the plaintiff is his villain regardant. The plaintiff said that he is free, and thereupon they were at issue; the plaintiff prayed that he might gage deliverance. And it was awarded that he should have deliverance of his goods, and find no surety that the avowant should have the goods again if it were found for him. But note when the avowant be at issue upon the villenage, c then the plaintiff shall find surety to sue cum effectu. 3 H.7.3.

B b

Surety

34 E.3.cap.2.

* This was the first Statute that gave this express authority to Justices of Peace.

44 E.3. Surety 24
Register 29 l.b.

Nora.
F.N.B. 79.8.

2 H.7.1.4. &c.

36 H.6.23.

3 H.4.9.

6 E.4.8.

12 E.4.4.4.

5 H.7.3.4.

13 H.7.17.2.

See F.N.B. 151.g.

Surety; By statutes: See the statute of W.1. cap. 20. De malefactoribus in Paris in the Second part of the Institutes in the exposition of the same; the statute of Gloc. cap. 4. and W.2. cap. 21. for finding of surety in a Cessavit. See also the Second part of the Institutes in the exposition thereof.

The statute of W.2. c. 4. Et statut. de defensione Juris, An. 20 E.1. of finding of surety by tenant by Receipt. See the Second part of the Institutes the exposition of the same. And many other whereof we need not to make mention; only this is observable, that when any statute doth require pledges or surety to be found, they ought to be sufficient, for insufficient pledges are no pledges in judgment of Law; and surety cannot be ex vi termini unless it be sufficient.

W.2. ca. 29. Mag.
Cart. cap. 26.
* Reg. 133. 134.
28 E. 3. ca. 9.
Stanf. Pl. Cor. 77.g.
See Hil. 32 E. 1.
Coram rege Rot.
71. & 79.
Regist. 268.b.
F.N.B. 250.a.
Bract. li. 3. f. 154.
28 E. 3. ca. 9.

It appeareth by W.2. cap. 29. that the * Writ De odio & atia concerning the bailment of prisoners is grounded upon Magna Carta. And it is holden by some, that Writ is not now in use, but is taken away by the statute of 28 E. 3. But this Writ is revived again by the statute of 42 E. 3. cap. 1. whereby it is enacted that if any statute be made against Magna Carta, or Carta de Foresta, it is enacted to be void. See more of this matter in the Second part of the Institutes; Mag. Cart. cap. 26. which were unnecessary here to be rehearsed. This Writ, De odio & atia is omitted by Fitzh. in his N. B. concerning the Writ De manucap-
tione, one kind thereof directed to the Sheriff is a Writ grounded upon, and re-
hearsing the statute of W.1. cap. 15. and how that before him by a certain in-
quisition of office A. B. standeth indicted de quodam latrocinio cujusdam equi,
&c. Now in as much, as by the statute of 28 E. 3. he cannot take such in-
quisitions by force of any Writ or Commission, therefore that Writ De manu-
captione ceaseth. But the Writ of manucap-
tione may be directed to other Justices,
as to the Justices of the Forrest, Justices of Peace and to other: for the statute
of 28 E. 3. extends only to Sheriffs, and to Sheriffs only upon taking of in-
quisitions. But a Writ of manucap-
tione may in other cases be directed to the Sheriff.
Vide the statute of 4 E. 3. cap. 2. for the Court of the Marshalsea, F.N.B. 251.

Regist. 80.a.
Regist. 133.b.
F.N.B. 250. k.l.
& 251.a.b.c.

Regist. 79.
F.N.B. 250. d.f.i.
See Bract. li. 3.
121. 154. Fleta
li. 2. ca. 2.

For the Writ of homine replegiand, see the Register fo. 133. F.N.B. 66.E.
Hil. 43 E. 3. Eoram rege Rot. 110. Suffex. Mich. 5 H. 4. Rot. 26. Devon' per
breve Regis in duobus Com' William Scuttes case. 11 H. 4. 15. F.N.B. 68.c. Cap.
in Withernam.

Bract. li. 3. fo. 145.
Britton fo. 49.
Fleta li. 1. ca. 40.
Mirror ca. 2. §. 11.
la appeal de im-
prisonment.

So odious was unjust imprisonment, or unjust detaining of any freeman
in prison, as in ancient time there lay a Writ De pace & imprisonment, &c.
ubi liber homo, &c. uno modo propter injustam captionem, & alio modo pro-
pter injustam detentionem, &c. And there you may read the form of the Writ of
Appeal, De pace & imprisonment, which we have the rather remembred, that
it may be observed what several remedies the Law hath allowed for the relief
and ease of the poor prisoner. But the readiest way of all is by Habeas Corpus
in the Term time, or in the Vacation out of the Chancery, as you may read at
large in the Second part of the Institutes, Mag. Carta ca. 29. and statut. de Gloc. c. 9.
and the Exposition upon the same.

34 H. 8. c. p. 14.
This is expoun-
ded to be reddendo
singula singulis re-
spective.

Vide 8 E. 4. 18.
a Vid. Dier 8 El.
253, 254. upon a-
nother branch of
this Act.

b 14 H. 7. 20. per
Keele Br. Judg. 8.
to be understood
of the Kings Bench
14 H. 7. 15. b. Per
Mordaunt.

The Clerk of the Crown, Clerk of the Peace, and Clerks of Assise shall cer-
tifye briefly a transcript of such Attainder, Duclawpy or conviction as is had for
any kind of felony before Justices of Oier & Terminer, Justices of Gaol-delivery,
and Justices of Peace before the King in his Bench, there to be and remain of
Record, &c. See the statute, a very necessary Law for the plea of auterfoitz attain-
or convict for ousting of Clergy, &c. and for escheats and forfeitures to the King.

b For the better understanding of this Act of Parliament, it is to be under-
stood, that such Attainders of Duclawpy and convictions of felony before any of
the Justices named in this Act, as are certified, or delivered into the Kings
Bench, are under the custody of the Clerk of the Crown of that Court, and
for that cause he is named in this Act.

See the statute of 9 E. 3. cap. 5. by which it is ordained and established, that
Justices of Assise, Gaol-delivery, and of Oier and Terminer, shall send all their
records and processes determined, and put in execution to the Exchequer at Mich.
every year once to be delivered there, and the Treasurer and Chamberlains, &c.
shall

shall keep them in the treasury as the manner is, so that the Justices always do first take out the extracts of the said records and processes against them to send to the Exchequer, as they were done before.

By the Statute of 11 H. 4. ca. 3. Justices assigned (id est, Justices of Assize) shall cause to be delivered into the Kings treasury all the Records of Assizes, *11 H. 4. cap. 3.*
13 H. 4. error 911

Wardances, and of certifications before them determined every second year. All Indictments and Presentments in the Sheriffs Turn, or law days shall be delivered to the Justices of Peace of the same County, at their next Sessions of peace to award process, &c. *3 E. 4. cap. 3.*
Vid. 4 E. 4. f. 31.
8 E. 4. fo. 5.

After the murder or manslaughter found before the Coroners they shall deliver their inquisitions afore the Justices of the next Gaol-delivery. *3 H. 7. ca. 1.*
Lib. Intr. Rast. 43.

If any person be murdered in the day, and the murderer escape untaken, the Township shall be amerced, and the Coroner hath power to enquire thereof upon view of the body, and the Justices of Peace have power to enquire of such escapes, and to certify afore the King in his Bench. *3 H. 7. ca. 1.*
Sq. H. 2
107 H. 4. p. 2

And (that we may say somewhat of every thing) Forasmuch as the charge to be given at the Sessions of the peace consisteth on two parts, Laws Ecclesiastical for the peace of the Church, and Laws Civil or Temporal for the peace of the Land, it shall be very fit to lay, as a foundation of the charge, that excellent Law established by Authority of Parliament, which we have translated into Latin. *W. 1. An. 3. E. 1.*
cap. 1.
 Pax { Ecclesiæ.
 Terræ.
 Justitia pacis mater & nutrix.

First of all, the King willeth and commandeth that the peace of holy Church and of the Land be well kept and maintained in all points, and that common right (i. Justice) be done to all, as well poor as rich, without respect of persons.

Whereupon the charge to consist upon two parts. 1. Of Laws Ecclesiastical, and 2. Of Laws Civil or Temporal, with an exhortation to do Justice.

Of another Axiome or Principle of the Law may be the foundation of the charge. *1 Mar. cap. 12.*
3 & 4 E. 6. ca. 5.
 Imprimis interest reipublicæ, ut pax in regno conservetur, & quæcumque paci adversentur provide declinentur. *Though the Body of these Acts be repealed, yet the Axiome rehearsed in the Preamble shall continue for ever.*
** 32 H. 8. cap. 9.*

It is most necessary in a Commonwealth to provide, that tranquillity and peace be continued in the Realm, and that all things being contrary therunto may by foresight be eschewed.

* Of that of 32 H. 8. There is nothing within this Realm that conserveth the subjects in more quietness, rest, peace, and good concord, then the due administration of his Laws.

Of the like, see the Third part of the Institutes, in Epilogo.

CAP. XXXII.

A Court of Inquiry of the defaults of the Justices of Peace, Justices of Assise, Sheriffs, and Under-Sheriffs, touching the execution of the Statute of 13 H.4. ca.7. concerning Riots, Assemblies and Routes.

2 H.5. cap.8.
Sec 19 H.7. c.13.

This Court is raised by the Statute of 2 H.5. and is a Court only of Inquiry, and to certify the inquests incontinent into the Chancery, as by the said Statute more at large appeareth.

CAP. XXXIII.

Justices in Eyre.

See the 2 part of
the Inst. W.1.
cap.27.
Bracton lib.3.
fo.116.
Britton fo.1.
2 E.3. fo.27.
Kelw. fo.143.

They were originally instituted for the good rule of the Subjects, and for the ease of the Countreies, and that such as had Franchises might claim them.

They were called Justiciarii in Itinere, or Itinerantes, in respect of other Justices that were residentes. In the black book in the Exchequer, cap.8. they are called Justiciarii deambulantes, & perlustrantes. See Vet. Mag. Cart. 2 part fo. 72. Artic' & sacramenta in Itinere.

Their Authority was by the Kings Writ in nature of a Commission, they had Jurisdiction of all Pleas of the Crown, and of all Actions real, personal, and mixt: they rood from seven years to seven years (but now by the Statute of 27 H.8. ca.24. all Justices in Eyre must be by Letters Patents under the Great Seal) In what County soever they came, all other Courts during the Eyre ceased, and all those pleas in that County, or rising there before any other, the Justices in Eyre might proceed upon as the others might have done. For example: A Writ was directed to the Justices of the Common Pleas to adjourn, and send all the pleas of that County which were in the Court of Common Pleas before the Justices in Eyre to be determined before them, &c. And if judgment had been within that County, the Justices in Eyre might award execution without a Scire fac'. See the First part of the Institutes, Sect. 514. and read the ancient books and other Authorities there quoted for their Antiquity and Jurisdiction, and the causes wherefore they vanished away. But the other Justices of Eyre, viz. of the Foreest, continue to this day according to their original institution. See the Chapter of the Court of the Foreest. See also the Second part of the Institutes, Marlbridge 24.25.27. W.1. cap.18. & W.2. cap.10. and the Exposition of every of them.

What Franchises and Liberties ought to be claimed before Justices in Eyre, see lib.9. fol.24. the case of the Abbot of Strata Marcella.

The stile of their Court was, Placita de Juratis & Assisis & Coron. de Itinere Johannis de Vallibus & sociorum Justic' Itiner' apud Ockham in com' Rutland in crastino Epiphaniæ Domini, Anno regni Regis Edw.14.

These Justices in Eyre did hold their Courts, as hath been said, from seven years

Regist.
F.N.B. 243.k.
14 H.7.29.
15 H.7.5.

ye ars to seven years, and first they began with Pleas of the Crown, for saith Bracton. Imprimis incipere debent de Placitis Coronæ, in quibus terminantur actiones criminales tam majores quam minores. And one could not be indicted for any thing, concerning the Pleas of the Crown, done before the last Eire: for so it appeareth by Bracton. Non erit querendum de Placitis illis Coronæ quæ emerferunt ante aliud iter Justiciariorum, & quæ coram eis proposita non fuerunt. And by Fleta; Ex capitulis de veteribus Placitis Coronæ alias præsentatis & nondum terminatis, solet exceptio quibusdam indictatis oriri, quod de novo indictmento de fact' ante ultimum iter imposito non tenetur respondere; & si non sit allocabilis, sequitur quod Juratores hundredi puniendi sunt de concealamento, vel de perjurio convincendi.

Bract. lib. 3. f. 115.
b. 116. b.
Fleta li. 2. cap. 29.
vers. finem.

Vid. postea. Ca. 60.
of Pipowders.

And it were to be wished that in criminal causes at the Kings suit, there were a limitation of time, especially in cases concerning the life of man. The Common Law in appeals at the suit of the party hath in those cases limited a time, viz. that they must be brought within the year and the day after the offence committed: and the reason thereof was, that the cause might be tried, while it was fresh in memory, and that such as could testify were living.

Vid. Hil. 13 E. 1. in Banco Rot. 56. they could adjourn into another County.

The Justices in Eire might inquire of the deeds of Justices of Gaol-delivery. Bracton saith, Et si post intervallum accusare velit, non erit de jure audiendus, nisi docere potest se fuisse justis rationibus impeditum. And Bracton alio saith, that after the charge given the Justices in Eire, debent transferre se in locum secretum, & convocatis ad se quatuor, vel sex, vel pluribus de majoribus de com' qui dicuntur * Busones com' ad quorum nūm dependent vota aliorum qualiter a Dño Rege & consilio suo sit provisum, quod omnes tam milites quam alii qui sunt a 15 annorum & amplius jurare debent, &c.

Rot. Par. 20 E. 1.
Rot. 6.

* Busones sive Bur-
sones, of the French
word *Boursen*: for
as it is in the pro-
verb, He that bear-
eth the purse ru-

leth the roast, which agreeth with Bractons description here, *Ad quorum nūm dependent vota aliorum*. So vulgarly called, which also Bracton insinuateth, when he saith, *Qui dicuntur busones*. a It is misprinted, and should be 12 annorum 2 for 5. See the 2. part of the Inst. Mag. Car. cap. 7. & 35.

So great was the authority of Justices in Eire, that if they came into the County where the Justices of the Court of Common Pleas sat, the jurisdiction of that Court during the Eire ceased, but they yielded to the Kings Bench.

Br. Jurisd. 115.
27 Aff. 1. F.N.B.
Fleta li. 1. cap. 10.
§. Ex capitulis
vers. finem.

See Cap. Itineris, Vet. Mag. Cart. part. 1. fol. 150, 151. &c.

See Hovenden, Anno Dñi. 1176. Vid. Hil. 13 R. 2. pl. 2. Of proceedings before them.

Rex Justiciariis suis prox' Itinerantibus, in com. N. Salutem. Quia per commune concilium Regni nostri Angliæ provisum est, quod quilibet liber homo libere possit facere Attornatum ad libertates suas vendicandas, exigendas, prosequendas, & defendendas; Vobis mandamus, quod Attornat' quem A. per Literas suas Patentes suo loco attornare voluerit, ad libertates suas vendicandas, exigendas, prosequendas, & defendendas coram vobis in Itinere vestro in com' prædicto, loco ipsius A. sine difficultate ad hoc recipiatis, &c.

Regist. 19. b.
* Viz. W. 2. c. 10.
Nota, The Regi-
ster is a good ex-
position of this
Statute.
See the 2. part of
the Inst. W. 2. c. 10.

See also another Writ in the Register, Ubi supra, De clamore admittend' in Itinere, &c.

C A P. XXXIV.

The Court of Justices of Trailbaston.

These Justices late by force of the Kings Commission of Oier and Terminer grounded, as some hold, upon an Ordinance made by King E. 1. and the Lords at a Parliament holden in Anno 33 E. 1. for the hasty proceeding. And therefore they were called Justices of Trailbaston, because they proceeded as speedily as one might draw, or trail a staff, they say upon the said Ordinance in the same year, viz. 33 E. 1. a Commission of Oier and Terminer Vocat' Trailbaston secundum ordinationem inde fact' in Parlamento de Anno 33 E. 1. By this it appeareth, as some have conceived, that this Commission was builded upon an Ordinance in Parliament, and not upon an Act of Parliament.

33 E. 1. in Dorf.
Pat. parte 1.

Vet. Mag. Cart.
2 part. fol. 28.

Others say that this Commission was grounded upon an Act of Parliament in Anno 33 E. 1. intituled Statutum quod vocatur Ragman de Justiciariis assignatis. See the Statute, and that the Ordinance mentioned in the Commission of 33 E. 1. is the Statute Ragman, Statutes being often called by the name of Ordinances, for every Statute is an Ordinance, sed non è converso.

But let us now consider what light our books have given us, the Statute being somewhat obscure and dark.

2 E. 3. fol. 27.

In Trin. 2 E. 3. we read this case. William de B. sued a Writ of Error returnable in the Kings Bench upon a judgment given in a plea of land at the suit of John Hodey, which was pleaded by bill before Justices of Trailbaston, where because the Justices of Trailbaston did send only the record of the plea, they were commanded to send the transcript of their Commission, and the bill also with the pannel, the which they did, and again the record also. In which case you may observe these five Conclusions. First, It was assigned for error, that John Hodey made his plaint of certain land against William de B. being present in Court before the Justices of Trailbaston, and he was put to answer without making of process against him, and therefore they erred in receiving the plea without process, &c. sed non allocatur. Secondly, For the Justices of Trailbaston be in their case as Justices in Cire; and in Cire when the party puts in his bill against another which is present in Court, the Justices in Cire ought to receive it. Thirdly, Another error was assigned, that it appeared by the record, that presently the Justices of Trailbaston took an inquest de circumstantibus, which came not in by process to give their verdict, and also it appeared by the record, that the Twelve gave their verdict, super sacramentum suum, without saying de consensu partium; sed non allocatur. For in Trailbaston and in Cire certain men are made to come by whom those Justices do inquire ex officio, that is, without process whereunto the parties which have pleaded to issue agree to be tried by them, the Court erreth not if they take an Enquest of them, and it is not found of record, that William de B. did dissent: and as to the other point, the Court shall intend an assent where there appeareth no dissent. Fourthly, The errors assigned being no errors, the Court did search for errors, and to affirm the judgment or to reverse it. And the Court did find in the first record which was sent, that William de B. dicit quod in nullo est inde culpabilis, & de hoc ponit se super patriam, where John de Hodey which was Plaintiff did not join with him, & prædictus querens similiter

similiter, which joyning was in the second record certified; but for that, that record came in without warrant, and the first record certified is the record in Law, thereupon the former judgment was reversed. Fifthly, that no error was assigned, that the Justices of Trailbaston had no lawful jurisdiction, but a writ of Error brought upon their Judgment, whereby, and by all the concert of this case their jurisdiction was affirmed, the Judges of the Kings Bench having, as is aforesaid, a Transcript of their Commission. Also they had jurisdiction in case of indictment of death, and so allowed, but Appeals of felony were excepted in the said Statute. 2 E. 3. 28.

Vide Dorf. Pat. Anno 14 E. 3. part 3. m. 8. & 2. A Commission of Trailbaston was granted to Robert Parning Treasurer and others in London, Middlesex and Surrey, and like Commissions were granted in other Counties. 14 E. 3.

A Petition was exhibited by the Commons in full Parliament, who prayed that no manner of Circuit Trailbaston might be holden during the wars, 62 20 years, &c. but it was not granted. Rot. Parl. 1 R. 2. 101.

But Precipitatio est Noverca Justitia: and both in respect of the precipitation and of some reference to the next Parliament by the Statute of Ragman, this Commission wholly long since vanished, and is left out of the Register as not to be put in execution. But the Commission of Dier and Terminer there remaineth as necessary and useful for the punishment of horrible and enomous offences. See before the Chapter of Dier and Terminer.

CAP. XXXV.

The Court of Wards and Liveries raised by Authority of Parliament.

The Statute of
32 H. 8. cap. 46.
¶ The Court of the
Kings Wards.
A Court of Re-
cord.
By the Statute of
33 H. 8. cap. 22.
the office of the
Liveries is annex-
ed to the Court of
Wards. So as now
it is in the Court
of Wards and Li-
veries.
See the first part
of the Institutes.
Sect. 441.
All Wards, Man-
nors, Lands, &c.
In the order, sur-
vey, &c.

First, the King our said Sovereign Lord by authority aforesaid, Ordaineth, maketh, establisheth, and erecteth a certain Court continually to be called for ever *The Court of the Kings Wards*: which Court by authority aforesaid continually and for ever shall be a Court of Record, and shall have one Seal to be graven and made after such form, fashion, and manner, as shall be appointed by the Kings Highness, and shall remain and be ordered, as hereafter shall be declared.

Also be it enacted by authority aforesaid, that all Wards which the Kings Highness now is, or hereafter shall be intitled to have, with their Manors, Lands, Tenements, Rents, Remainders, Reversions, Services, and all other Hereditaments whatsoever they be, as well in possession as reversion, and all Revenues, Issues, and Profits of the same, and every part thereof, for the time the same shall be, or ought to be in the Kings possession, shall be in the order, survey, and governance of the said Court, and the Ministers of the same, in manner and form, as by this Act is declared and limited.

Also that the said Master of the Wards for the time being shall have full power and authority to award under the Seal to be appointed to the said Court in the Kings name such Procefs and Precepts with reasonable pains to be therein limited, as be now commonly used in the Kings Court of the Duchy Chamber of *Lancaster* being at *Westm.* against every person or persons whatsoever they be, for and concerning the interest, right and title of the Kings Majesty, his Heirs and Successors, of, in or for any Wards, Lands, Tenements, Rents, Account, Receit, Services, or other cause in any wise touching or concerning any thing appointed by the order of the said Court, or any part thereof, for and on the behalf of our said Sovereign Lord the King, or to or for any debt, rising and growing by occasion of the same.

Also be it enacted by the authority aforesaid, that the said Attorney, Receiver General, and Auditors shall diligently from time to time attend upon the said Maister in the said Court for the hearing and ordering of matters and causes in the same Court for the time of four Terms in the year usually kept for the Law at *Westm.* and procure with all diligence, that all rents, farms, profits, casualties, improvements, and other emoluments of the Wards marriages, Ideots, and all Mannors, Lands, Tenements, and Hereditaments, being in the survey and governance of the said Court, shall be truly and justly paid, and answered to the said Receiver General of the said Court to the use of the Kings Highness without concealing any part thereof. And shall also cause and procure Procefs to be made against such as shall be indebted

Procefs.

Duchy Chamber.

In any wise touch-
ing or concerning,
&c.

Debt.

Attend.

By the said Act of
33 H. 8. the Sur-
veyor is added,
and to take place
before the Attor-
ney.

Indebted.

to the Kings Highness and their sureties of and for any part thereof from time to time, as the time and case shall require without any delay.

Also be it enacted by the Authority aforesaid, that all manner of Proces that shall be made out of the Kings Exchequer to or against any person or persons for any Farm, Rents, Issues or Profits concerning the premises or any part thereof, or any other thing limited in this Act to be in the survey, order, and governance of the said Court, and the Ministers thereof, shall be clearly void and of none effect to all intents and purposes.

No Proces out of the Exchequer for or concerning any Ward, &c.

To be made out of the Exchequer

Also be it enacted by the Authority aforesaid, that the said Master by the advice of the said Attorney, Receiver General, and Auditors, or three of them, whereof the said Master to be one of them, shall have authority by this Act to survey all the Kings Widows, and to treat, commune, and conclude as well with all and every of the Kings Widows that now be, or hereafter shall be, and that have married themselves without the Kings Licence, or that hereafter shall happen to marry themselves without the Kings Licence, for their reasonable fines to be made to the Kings use, and to tax and assess the same by their discretion according to the Statute of *Prærogativa Regis*: the same fines to be paid to the Receiver General of the Wards Lands, as the same may appear yearly in his account.

Widowes.

Also be it enacted by the Authority aforesaid, that the said Master by the advice of the said Attorney, Receiver General and Auditors, or three of them, shall have Authority by this Act to survey, govern and order all and singular Ideots and natural Fools now being in the Kings hands, or that hereafter shall come and be in the Kings hands. And also to survey and order all the Mannors, Lands, Tenements, and other Hereditaments whatsoever, now being in the Kings hands, or in the hands of any other person or persons to their uses, or to the use of any of them, that hereafter shall come and be in the Kings hands, his Heirs and Successors in the right of any of them by reason of his Graces Prerogative Royal: And also by the advice of the said Attorney, Receiver General, and Auditors, or three or two of them, to let and set, the Mannors, Lands, and Tenements to the Kings use for the time of the Kings interest for such rent and fine, as by their discretion shall be thought convenient; the finding and keeping of the said persons their Wives and Children, and the reparations of their houses and lands always to be considered in the doing thereof; the same rents and fines reserved to the Kings Grace to be paid always to the hands of the Receiver General of the Wards Lands for the time being, as the same may appear in his account, and be recorded in the Court of Wards.

Ideots, Natural Fools.

To let and set.

And also be it enacted by the authority aforesaid, that the said Master for the time being shall have power and authority to take Recognizances of all and every person and persons that shall be called into the Court of Wards and Liveries to answer to any matter alledged against them in the said Court, to make their daily appearance in the said Court, to answer to such matters as to them then and there from time to time shall be alledged. And that all such Recognizances of what sum soever they be, shall be as good and effectual in the Law to all

Called by Proces

Cc

intents

To moderate Recognisances.

intents and purposes, as Recognisances taken in the Kings High Court of Chancery, or elsewhere before any Judge of Record within this Realm. And that the said Master for the time being with the advice of the Court, or of such member of the same as then shall be present, so that they be two beside the said Master, shall have full power and authority to moderate such Recognisances as be or shall be there forfeited, and to set fines for the same to the Kings use under the sums contained in the said Recognisances; the said fines to be levied by like Proces of *Scire facias*, as by the Statute made in the 27 year of our Sovereign Lord the Kings Reign, is given to the Chancellor of the Court of Augmentations of the Revenues of his Graces Crown. And that the said Master for the time being with the advice aforesaid shall have power and authority to commit to Ward any person or persons for his or their disobedience, contempt, or other offence made, or to be made triable within the Kings Court of the Wards and Liveries, and upon the said matters ordered or decreed there, to deliver them from prison, and to cancel and make void all Recognisances and Obligations taken or hereafter to be taken in the same Court to the Kings use when and as often as the said Master, with the advice of the said Court or three of them, shall see and perceive the matters and causes, for the which any such Recognisances or Obligations hath or hereafter shall happen to be taken, to be finished and ended, and the Kings Grace his Heirs and Successors, or the party thereupon satisfied, without any other warrant for the same.

¶ The Authority of the Courts of Exchequer, Wards and Duchy.

A clause of the statute of 33 H.8. ca.

39.

* Assigned.

And also shall have full power and authority to hear and determine all and all manner of Debts, Detinues, Trespasses, Accounts, Reckonings, Waits, Deceits, Negligences, Defaults, Contempts, Complaints, Riots, Quarrels, Suits, Strifes, Controversies, Forfeitures, Offences, and other things whatsoever they shall be, which shall hereafter grow, be moved, stirred, procured, pursued, or arise in, for, or upon any matter, cause, or other thing* assigned, committed, or appointed to the several directions, orders, and governances of the same Courts, or any of them, or for or upon any manner of thing or things which may or shall touch or in any wise concern the same, wherein the King shall be only party. And also all manner of States for term of years between party and party concerning the premises, and to correct and punish by their discretions all and every person and persons which before them shall be convicted of any of the premises according to the nature, quality, or quantity of his or their offence or offences, cause or causes, matter or matters (all and all manner of Treasons, Murders, Felonies, Estates, Rights, Titles, and Interests as well of Inheritance as Freehold, other then Joyntures for term of life, only excepted and always foreprised.)

Before we descend to the several parts and branches of these Acts, it shall be expedient for advancement of truth to handle and clear two questions. First, when Wards became due to the Kings of England, by what title, and upon what reason. Secondly, who had the charge of the Kings Wards; how they were disposed of, and in what Court this Revenue was answered before the Reign of H.8.

The

The first contains three things, Time, Title, and Cause. And in all these three Polydor, and such as follow him do err: For Polydor saith that Henricus

3. Anno Domini 1219. qui avitum regnum civili bello, ac dissensionibus vastatum, opibus spoliatum, atque prope confectum paulo ante adeptus erat, cum rei domesticæ inopia pressus, non posset sine auxilio suorum, Asiaticum bellum juvare, vitamque regiam decenter degere, principes soluto prius tributo pro eo bello gerendo postea excogitato novo vectigalis genere, ut regem suum ea inopia levarent, a ultro concesserunt, ut quoties quisspiam eorum, qui possessiones haberent b quarum Rex esset Dominus, ante moreretur quam liberi quos fecisset heredes vigesimum alterum agerent annum, tum eatenus tam ipse hæres quam patrimonium in potestate atque tutela regis foret, & ille patrimonii huiusmodi proventus caperet, quoad hæres ad eam ætatem perveniret: quia apud Anglos more majorum pervetusto conservandarum facultatum causa, filius mas natus grandior sit solus hæres, vel filia si mares liberi nulli sint. Egit Rex gratias omnibus generatim pro munere, ac ut ne id humanitatis in oblivionem iret, deinceps istiusmodi nobilium heredum tutelam ut rem sibi valde utilem accuratissime suscepit. Sed illud beneficium nequaquam ipsi nobilitati postremo bono fuit, quando ceteri reges qui secuti sunt, non habita ratione, quod a principibus olim in Henricum duntaxat collocatum fuisset, ut qui pauper esset decentius personam regiam per illud sustineret, sibi etiam perpetuum voluerunt. Quid, quod ita res curæ omnibus fuit, ut non modo reges, sed reliqui locorum domini in hereditates nobilium defunctorum eodem modo invaserint, id quod etiam nunc fit, & lege certa observatur. Unum istud institutum est tandem aliquando corrigendum, quippe quod quantum uni vel alteri commodi, tantum aliis incommodi affert: sane ita usu venit, ut populorum quibus hereditates veniunt tutelam sæpe a locorum dominis ad tempus sicut dictum est, illorum tutoribus per auctionem vendantur, quo sic facto lucro, ab ea educandorum puerorum cura vacui sint, & qui emunt, emunt autem tam nobiles, quam homines novi, si modo plus dederint, ea præsertim de causa redimant, ut pupillos nobilium suis liberis matrimonio jungant. Idque sæpissime faciunt, antequam illi pubescant, quo simul vivendo, cum primum per ætatem liceat, urgente voluptatum titillatione invicem commisceantur, ut ne postea, cum adoleverint, juxta mutui polluti nuptias repudiare queant, qui sic sese ab incunte ætate libidinibus dedecorantes interdum non homines, sed ob virium infirmitatem plane homunciones gignunt a majoribus degenerantes. Atqui nobilitas cum primis eo damnum facit longe ingentissimum quod homines humili loco nati per ejusmodi connubia sanguinem cum ea sociant, contaminantque indies singulos ejus vetustum genus, & pupilli ipsi a sinu matrum per emptionem erepti parum interdum honestis in aliena domo instituantur. Oritur vel hinc res alia indigna de qua nunc tacere libet, istorum enim conjugum gratia admodum modica aliquoties existit cum ante ætatem, & aliquando contra voluntatem nobiles feminae, virique plebeis copulati per raro inter se ament. Prætereo & illud, quantum patrimonia nobilium, causa hujusce tutelæ lacerentur a novis possessoribus; qui suis avare commoditatibus servientes pecus omne non modo tondent, sed deglubunt egregie. Atque hoc est principum munus, quod regias opes maxime adauxit.

Polydor lib. 16. pag. 288.

Excogitato novo vectigalis genere. a Ultro concesserunt. b Quarum rex esset Dominus.

Herein Polydor hath erred in all three. For first, where he affirmeth for the time, that this Novum vectigalis genus was excogitatum, and granted to King Henry the third Anno Domini 1219. which was in the third year of his Reign, Glanvil who wrote in the Reign of H. 2. treateth of Wardships due to the King

Lib. 7. cap. 9, 10.

And Ockham who wrote *tempore* H. 2. treateth also of Wardships and Liveries.

Matth. Paris, pag. 246.

1 part of the Institutes. Sect. 103.

Polydor saith, that this *Novum vestigialis genus* was granted to the King.

1 part of the Institutes. Sect. 1.

Britton fo. 162. b. Lib. Rub.

The Charter of King Kenulfus Anno Dom. 821. The like Charter of King Ethelred to a Knight called Athelweg, Anno Dom. 995.

The Charter of King Ethelred. 1001 Bracton lib. 2. fo. 36, 37, &c. 1 part of the Institutes Sect. 103. Verb. Chivaler. Castle. Coming of enemies.

Ditone. Regist. fo. 2. Domesday tit. Cestrefc.

and other Lords: to the King in these words. Notandum tamen quod si quis in capite tenere debet, tunc ejus custodia ad dominum regem plene pertinet, sive alios dominos habere debeat sive non, quia dominus Rex nullum potest habere parem, multo minus seniore, &c. And he treateth ubi supra of Wardships then due, (which holdeth Law till this day) and speaketh nothing of the beginning of them.

King John in the seventeenth year of his Reign made a great Charter, and granted Concilio Baronum, quod custos terrarum heredis qui infra aetatem fuerit non capiat de terra heredis nisi rationabiles exitus, & rationabiles consuetudines, & rationabilia servitia, & hæc sine destructione & vasto hominum vel rerum. Et si nos commiserimus custodiam alicui talis terræ vicecomiti vel alicui alii, qui de exitibus terræ illius nobis debent respondere, & ille destructionem de custodia fecerit vel vastum, nos ab illo capiemus emendam, & terra committatur duobus legalibus & discretis hominibus de feodo illo, qui similiter nobis respondeant, sicut prædictum est. Custos autem quamdiu custodiam terræ habuerit, sustentet domos, parcos, vivaria, stagna, molendina, & cætera ad illam terram pertinentia de exitibus terræ ejusdem. Et reddat heredi, cum ad plenam aetatem pervenerit, terram suam totam instauratam de carucis, & omnibus aliis rebus, ad minus secundum quod illa recepit.

2. Where Polydor saith, Ulro concefferunt ut quoties, &c. he affirmeth that it came from the grant of the subject to the King. The truth is, that all Tenures by Knights service, which since the Conquest draw ward and marriage (for relief was due before) were either created and reserved by the King, or before of 18 E. 1. Quia emptores terrarum by the subjects of the Realm. If by the King, it is either of the person of the King, ut de corona, which we call in Capite, or of some Honour or Mannor. If by a subject, either of his person or of an Honour or Mannor. And all these tenures have been created according to this rule, Cujus est dare, ejus est disponere. And all the Lands in England originally moved from the King, and are holden of him mediately or immediately.

3. He utterly mistaketh the end of the creation of these tenures by Knights service, which were originally created for the defence of the Realm by his own subjects, which is more safe, then to trust to foreigners. But hereof you may read at large in Littleton Sect. 95, 96. & 103. & Li. Rub. Mavult enim princeps domesticos, quam stipendiarios bellicis apponere casibus.

This Tenure which now is called Escuage, or Servitium Scuti, was of ancient time named expeditio hominum cum scutis, as you may read in the Charter of King Kenulphus, who Anno Domini 821 & regni sui 25. granted to the Abbot of Abbandon many Mannors and Lands, and reserved quod expeditionem duodecim virorum cum tantis scutis exerceant, Antiquos pontes, & arces renoveant, &c. Of all other services and Charges he and his Successors were discharged.

*In nomine excelsi Tonantis, cujus nutu & miseratione a pio patre prædictus, ego Ethelred Rex totius Insule cum consensu & licentia Optimatum meorum aliorumque meorum fidelium dabo, & libenti animo concedo Clostic. quandam ruris particulam, hoc est, 20 mansos in loco quem rusticola vocitant at yceantun in hereditatem perpetuam, & semper liber permaneat notis & ignotis, magnis & modicis, ad habend' & tradend' quicumque voluerit relinquat ab omni tributo & * servitio regali, nisi constructione pontis, & arcis edificatione, & hostium expeditione. Actum est autem hoc meæ concessionis domum Anno Dominicæ Incarnationis 1001, &c.*

In the Book of Domesday you shall find it thus recorded. Episcopus Baioc'.

Sudrie.

Ille qui tenet de Wodardo reddit ei 50 s. & servitium unius militis, and in divers other places. And in Domesday mention is often made of Drenches or Drenges, which is as much to say as Tenentes per servitium militare.

Many

Many others of this kind might be cited to prove that prudent Antiquity ever provided by reservation of tenure (amongst other things) for the defence of the Realm against the Invasion of Enemies.

All our ancient Authors treat hereof. See the First part of the Institutes, Sect. 103. and see the Grand Custom of Normandy. Cap. 33. &c. fol. 49.

You have heard before de regali servicio, before the Conquest, but that regale servitium (which was Knights service) drew unto it relief, but neither wardship of the body or of the land, as hath been said; it is true that the Conqueror in respect of that royal service as a badge of the Conquest took the wardship of the land and the marriage of the heirs within age of such tenants, but this extended not to the tenures of the subjects by Knights service, as it appeareth by Bracton: Dicitur Regale servitium, quia spectat ad Dominum Regem, & non alium, & secundum quod in Conquestu fuit adinventum; & hujusmodi servicia persolvuntur ratione tenementorum, & non personarum, quia ex tenementis proveniunt, ut si dicatur faciendo inde forinsecum servitium, vel regale servitium, sive servitium Domini Regis, &c. So as the Conqueror provided for himself, but other Lords at the first by special reservation since the Conquest provided upon gift of lands for themselves: Regis ad exemplum totus componitur orbis, wherein that which we had from the Conqueror we freely confess, and that which the Normans had from us, we have truly related in other places.

The good King H. 1. son of the Conqueror finding that the wardship of the body and lands of his Tenants by Knight service, erected by his Father, was both grievous and unjust, by his great Charter Anno primo Regni sui, reciting Quod Regnum suum oppressum erat injustis exactionibus, &c. (and particularly tempore patris sui) did grant (amongst other things) Quod si uxor cum liberis remanserit, dotem suam & maritadium habebit dum corpus suum legitime servabit & eam non dabit nisi secundum velle suum, & terræ & liberorum cultus erit sive uxor, sive alius proquiquior, &c. To be short, by that golden Charter, Omnes malas consuetudines, quibus Regnum Angliæ injuste opprimebatur, inde abstulit, & legem Regis Edwardi reddidit. These were called King Edwards Laws, not that King Edward made them, sed quia ex tribus legibus, sc. Anglorum, Danorum, & Merciorum unam legem communem edidit. Vide Ranulph' Cestrensi. Li. 1. cap. 50.

And where some have objected that wardship is a badge of servitude, for that in the Writ of Natio habendo, one of the Expleas (amongst others) is capiendū redemptionem ab eo pro filiis & filiabus maritandis, & aliis Villanis serviciis. That is, taking ransom of him for the marriage of his sons and daughters, and other villain services. To this it is answered, that the King for marriage of his Wards taketh no ransoms, but such moderate sums of money, as in respect of the quality and state of the Ward, he or she, all circumstances considered, is able to pay, and in regard thereof he hath the protection of the Court of Wards during minority: but if ransoms should be taken, it should not only be against the right institution of Wardships before remembred, but also a badge of servitude: and therefore by the Statute of Magna Carta, of H. 3. cap. 4, 5, 6. (seeing the Crown had a long possession of the Wardship of the body and lands of the Kings tenant by Knights service) it was provided, first, that the King or his Grants or Committee should not take of the lands of the heir * but reasonable issues, reasonable customs and reasonable services, without destruction, &c. (and all unreasonable and excessive things are against the Common Law, Excessivum omne in jure reprobatur.) Secondly, Shall keep up the houses and other inheritance of the heir, and deliver to the heir, all his lands sowed with ploughs and all other things (woods and all) at least as he received them: whereby it appeareth, that the value of the marriage should be so reasonable, as the heir should not at his full age be enforced for payment thereof to sell either lands or goods. Thirdly, That if the heir be married, that he be advanced thereby, and not disparaged.

John Carl of Oxford being the Kings Ward married without the Kings licence,

Glanv. l. 7. c. 9, 10.
Ockham in diversis locis.

Mirror cap. 155.
Bracton lib. 2.
fol. 36. a. 85.
Britton fol. 162.
28. 95.
Fleta l. 1. cap. 8:

Bract. l. 2. fol. 36.
Ubi supra.
The tenure (as before it appeared) was not then invented, but the fruits of the tenure of the King, viz. Wardship and marriage, which was Bractons meaning.

* Note, reasonable thrice repeated, that it might be observed.

Rot. Parl. 15 H. 6.
ca. 15.

tence, for the which, both for the contempt, and for the duty to the King for so marrying, he was fined at Three thousand pounds, which was not to the value of his lands by one year: and yet he petitioned in Parliament to be pardoned of part thereof, which was thought reasonable. And certainly the reasonable raising of Wardships of the body and lands is both according to the Laws of the Realm, and a mean of increase of the Kings Revenue.

As to the third: there were of ancient and latter times Masters or Keepers of the Kings Wards for the Kings best advantage, and the profits and revenue thereof were answered in the Kings Court of Exchequer: as taking one example of two instead of many for both the points.

* Rex commisit Radulpho de Nova villa Episcopo Cicestr. & Stephano de Segrave custodiam omnium Escheatorum suorum qui accidunt per totum Regnum Angliæ, tam in Wardis, quam in omnibus aliis Eschaetis quæ Regi accidere possint, & respondend' inde ad Scaccarium.

a See the Statute of 51 H. 3. stat. de Scaccario. Sheriffs shall be keepers of the Kings Wards, and answerable for the issues thereof in the Exchequer.

b What care there was of ancient time to preserve the treæ of pious, honorable, and profitable tenures of the King, and for profit especially tenures in Capite and by Knights service, and that the King should be truly answered of Wardships, and other fruits and profits due unto him by reason thereof, it notably appeareth by the Articles inquirable by the Justices in Cite, and by our ancient books.

* De Eschaetoribus & Subeschaetoribus in seiscina Dom' Regis facientibus vastum, vel destructionem in parcis, boscis, vivariis, vel Warrenis infra custodias sibi commissas per Dominum Regem, quantum & de quibus, & a quo tempore. Item de eisdem qui occasione hujusmodi ceperint bona defunctorum, vel hæredum in manu Domini Regis injuste, donec redimerentur ab eis, & quid, & quantum pro hujusmodi redemptione & quid ad opus suum inde retinuerint, & a quo tempore. Item de eisdem qui minus sufficienter terras alienas in favorem ejusdem, vel alterius cujuscunque cui custodia terrarum illarum dari, vendi vel concedi debuerit, in deceptionem Domini Regis, & ubi, & quando, & quid inde ceperint, & a quo tempore. Item de eisdem qui prece, precio, vel auxilio vel favore consenserint, vel consuluerint quod custodia Domini Regis venderentur pro minore precio, quam vendi deberent secundum verum valorem, vel maritagia ad Dominum Regem spectantia. Et si aliquo modo conclaverint custodias Dom' Regis, vel maritagia hæredum, vel tenentium de Rege in capite, vel maritagia dominarum, viduarum maritatar' sine licentia Regis, & si quid propter hoc ceperint & quantum, & a quo tempore. Item de hiis qui reservaverint ad opus proprium custodiam, vel maritagium per leve precium, sive per conclamentum factum versus Dominum Regem, & cujusmodi damnum Rex inde habuerit, & a quo tempore. Item cujusmodi seiscierint terras, & per quantum tempus eas in manu Dom' Regis tenuerint. Item de terris captis in manu Dom' Regis, quæ capi non deberent, & postea restitutis per præceptum Dom' Regis cum perceptis, utrum percepta restituerint ad mandata Dom' Regis, vel non. Et de omnibus prædictis factis & commissis infra viginti & quinque annos proxime prædictos prædicti Justiciarii se intromittant. Et omnes illi qui sentiunt se super hiis gravatos, & inde conqueri voluerint, audiantur, & fiat eis super hoc justitia, & ipsi Justiciarii pro hiis quæ Dominum Regem contingunt diligenter inquirant, &c.

Primo & principaliter inquiratur de feodis militum, & advocationibus Ecclesiarum ad Dom' Regem pertinentibus, viz. quot sunt, & quæ sunt tenementa, & quantitas tenuræ, & per quæ servicia. Item

* Rot. finium.
14 H. 3. m. 9.
Hereof see Mat.
Par. An. Dom. 1232
16 H. 3. Of Hubert
de Burgo, & Stephen
Segrave.
See also Int. Rot.
finium, Anno 3 E.
1. m. 4. Rot. Par.
3 E. 1. m. 33. Rot.
finiū. 13 E. 1. m. 24.
a Rot. Par. 25 H. 6.
parte 2. m. 24.
b See the 1 part of
the Institutes, li. 2.
per totum.

* Capit. Itineris
In Vet. Mag. Car.
157, 158.
Bract. l. 3. 116. b.
Britton fol. 28.
Fleta l. 1. cap. 20.

Vet. Mag. Carta
160, 161. Inter
Capit. Eschaetrix.

Item si feoda illa integra sint vel demembrata, non habendo respectum ad tempus. Item si demembrata, per quem, quando, cui, qualiter, quomodo, & quantum valent per annum. Item si tradantur alicui ad terminum vite, vel annorum sine licentia Regis, tunc cui, quando, qualiter, & quomodo, & quantum valent per annum. Et si tenentur per medium, per quem medium.

Item de tenementis qua tenentur de Rege in capite, vel teneri debent, si aliquis faciat se medium inter Dominum Regem, & verum tenentem suum, tunc queratur ubi, quando, qualiter, & quomodo, & ad quod damnum Regis, vel si modo tenuram mutaverint.

Item de aliis qui tenent de corona per magnam Serjantiam, vel parvam, antiquum dominicum Domini Regis, socagium, feodi firmam, vel per aliquod servitium, si iidem tenentes aliquod alienaverint, vel demembraverint, cui, quando, quantum, qualiter & quomodo, siue sint de aliquo honore, siue de corona, & de valore annuo. Et si aliquis, qui de Rege tenuerit per antiquum dominicum vel socagium, mutaverit tenuram suam, & ad damnum Regis, cui, ubi, quando, qualiter, & quomodo, & ad quod damnum Regis, & quantum huiusmodi tenementum valet per annum.

Item si aliquis concelaverit aliquem redditum, siue aliquod servitium, seu aliquas consuetudines Domino Regi debitas, tunc quis, quando, qualiter, & quomodo, & que servicia, & quem redditum, & quas consuetudines, & que tenementa tenent de quibus debentur huiusmodi servicia, & quantum valent per annum, & ad quod damnum Regis huiusmodi concelamenta sunt.

Item, de heredibus quorum custodia & maritagium pertinent ad Dominum Regem, & Dominus Rex ea habuerit, quando deberet habere. Et si aliquis huiusmodi heredum ingressus fuerit sine auctoritate Curie, & absque legitima etatis sue probatione, si infra etatem, & si plena etatis, absque faciendo regi homagium, vel aliud servitium quod ei debet. Et tunc quis sit ille heres, quo tempore intravit, & post mortem cuius & per quod servitium illa hereditas teneatur, & quantum valet per annum.

Item de viduis similiter quarum maritagium pertinet ad Regem, si se maritaverint sine licentia Regis, cui, quando, cujus consensu, & ad quod damnum Regis, & quantum tenementa valent que tenent in dotem de primo marito suo.

Item de heredibus qui deberent esse in custodia Regis, & quis custodiam usurpaverit super Regem, & a quo tempore, & quantum tenementa que tenent valent per annum.

Item si aliquis huiusmodi heredum cuius antecessor de Rege tenuit in capite, siue de aliquo heredem in custodia Regis existente, maritatus fuerit sine licentia Regis, tunc cui, quando, & per cujus consensum, & quantum terra ille valent per annum, & quantum cepit pro maritaggio.

Item si dominica terra Domini Regis in isto Wapentagio sunt in tali statu sicut esse deberent, vel si trahuntur ad firmam, si dimittantur secundum valorem annum earundem, & si custodes vel firmarii vastum vel destructionem, venditionem seu exilium fecerint in eisdem, vel in terris existentibus in manu Domini Regis per custodiam, vel alio modo, quis, ubi, quando, &c.

Pea so precious was immediate tenures of the King, as you read in the Parliament Roll in 18 E. 1. in these words.

Gilbertus de Umphrevill petit licentiam quod possit feoffare Gilbertum filium

Rot. Par. 18 E. 1.
fol. 4. nu. 52.
Note the form of
this tenure.

filium suum primogenitum, &c. Margar. uxorem ejus de maneria suo de Overton, Tenentis de ipso Gilberto patre durante tota vita ipsius patris, &c. post ejus decessum de capitalibus dominis feodi. Respons. Rex non vult aliquem medium. Ideo non concessit.

14 E. 3. cap. 13.
Stat. 1.

By the Statute of 14 E. 3. if the heir of the Kings tenant in Chief, &c. be found within age, and the next friends of the heir, to whom the inheritance cannot descend, shall come and offer them to take the said lands, yielding the value to the King till the age of the heir, as far forth as other will yield without fraud, by accord between the Chancellor and the Treasurer, they shall have Commission to keep the said lands by good and sufficient surety till the age of the said heir, and to answer the King the value. In this Act this Treasurer is intended of the Treasurer of the Exchequer. See before in the Chap. of the Court of Exchequer.

Rot. Par. 1 R. 2.
nu. 79. Rot. Par.
50 E. 3. nu. 118.
* Rot. Par. 22 E. 4.
nu. 16. not in print

Amongst the petitions of the Commons, they pray that the said Statute of 14 E. 3. may be observed, which the King granted.

It is provided by Act of Parliament in An. 22 E. 4. that where sundry of the Kings tenants holding of him immediately, as of his Duchy of Lanc. by sundry recoveries, fines and feoffments in use, defeated the King of Wardships of body and lands: It is enacted, that the King and his heirs shall have the Wardship and custody of the body and lands of every such person being within age, to whose use the fee simple or fee tail of any hereditaments so holden shall grow as heirs by the death of any of his Ancestors, and if they be of full age to have relief notwithstanding any such conveyance.

Ibidem nu. 17.

An exact provision is made for Writs to be granted out of the Chancery for the embesiling of any such heir upon such pursuit of the Attornay of the Duchy.

4 H. 7. cap. 17. A
general Law.
Note the several
pennings of these
two several Acts.

By the Statute of 4 H. 7. it is provided that the Lord of Cestri que use, no will being declared, &c. shall have a Writ of right of ward for the body and land, and the heir of Cestri que use being of full age at the death of his Ancestor shall pay relief. And the heir of Cestri que use shall have like action of waste as if the Ancestor had died seised, &c.

Dier 1 & 2 El.
fol. 174. b.

Upon this Statute, a case that had in Mic. 1 & 2 El. depended undiscussed thirtie years, as the Lord Dier reports, but not in the Court of Wards, (for that Court had not then had so long continuance) but in the Chancery and the Court of Wards it had so long continued, though in 7 H. 8. it had been resolved by all the Judges in the Exchequer Chamber, that Cestri que use of lands in fee by Knights service in Capite, and of lands holden of another Lord in socage dying seised of the use of both, his heir within age, and no will by him declared, that the prerogative shall hold place: which resolution if it had been published in print, the tedious and chargeable suit had not so long continued.

Lib. 4. fol. 55. &c.
Vid. 2 E. 6. cap. 8.
Lib. 7. f. 45. Lib. 8.
168, 169.
See the 2. part of
the Inf. Cap. the
Statute of 2 E. 6.
c. 8. See 50 E. 3.
nu. 184.
See hereafter
1 H. 8. c. 12.
This Proclamati-
on we have.

Now for Traverses, Monstrans de droit, &c. to be relieved against offices found for the King, you may read at large in our books, and especially in the Sadlers case in the Fourth book of our Reports, which being the birthright of the subject for his relief against a false office found, cannot be denied upon just cause shewed, but not to be used for delay. This was the offence of Sir Richard Empson and Edmund Dudley Privy Counsellors to King H. 7. and Masters of his forfeitures (a new and unaccustomed office) who causing secret and false offices (as shall appear hereafter) to be found, the parties grieved were denied to have their traverse, Monstrans de droit, &c. which King H. 7. a little before his death being far gone into a consumption, with great remorse of conscience amongst other things repented, and by Proclamation under the Great Seal in print (amongst other things) published in these words.

See the Statute of
1 H. 8. cap. 12. in
ratifying hercof.

And that none of his subjects ne make no doubt nor difficulty in all causes leeful to make traverses, for his Highness will expressly, and straightly chargeth and commandeth his Chancellor and Treasurer that they not only admit such traverses, but also grant the terms, where the case shall require, according to the true course of his Laws.

Here

Hereupon many men were admitted to their traverses, and many on the other side were without remedy; for by the practice of Empson and Dudley, many were not only denied to traverse, but enforced upon such false Offices to sue out their general Liveries, whereby they were concluded, and could not by Law be admitted to their traverse.

King H.8. in the first year of his Reign intending to give remedy against secret Offices, doth by Act of Parliament provide, * That every Escheator and Commissioner shall sit in convenient and open places, according to the Statute heretofore made: and that the said Escheators and Commissioners shall suffer every person to give evidence openly in their presence, to such Inquests as shall be taken before any of them, upon pain of xlii.

And by the Preamble and other parts of this Act of 1 H.8. the sinister and unjust dealing of the said Empson and Dudley concerning the finding of Offices, are pourtrayed out, whereby the Kings Subjects then of late had been sore hurt, troubled, and wronged, and some discredited by nine other ways. 1. In causing untrue Offices to be found. 2. In returning of Offices that never were found. 3. In changing of the Offices that were truly found. 4. That Escheators and Commissioners were men of no livelihood, but indigent and unworthy persons, ready to serve currs, and having nothing to lose, or to make satisfaction to the party grieved. 5. That Juroys were returned for the finding of Offices of no habilitie, or behaviour. 6. That the Escheator or Commissioner, when the Jury were agreed of their verdict, would not receive the same, but therein use delays. 7. That the Clerk of the Petit Bag, &c. would refuse to receive, and file such inquisitions as were found and offered to them. 8. The like of the Officer in the Exchequer, of Offices returnable into the Exchequer. 9. The Clerk of the Petit Bag would refuse to transcribe the Offices, &c. into the Exchequer. For all which, and the other two before named, remedy is provided by this Act, as by the same appeareth. At the same Parliament for the redress of parties grieved for suing out of Liveries, another Act is made, entitled, An Act concerning untrue inquisitions procured by Empson and Dudley, in these words.

Shewn to your discreet wisdoms, that where divers and many untrue Inquisitions by the procurement of Richard Empson Knight, and Edmund Dudley, have been had and taken within this Realm, as well before Commissioners assigned by Letters Patents of the late King, King H.7. as before his Escheators, as well by vertue of Writs of the said late King, as by vertue of their office, by the which Inquisitions, sometime parcel of the said Lands contained in the said Inquisitions, and sometime the whole Lands there founden holden of the said late King in Capite, where in troth the said Lands contained in the said Inquisitions, nor no parcel of them was holden of the said late King in Capite, ne of any of his Progenitors: To the which Inquisitions the parties then grieved by the same, could not, nor might not take their traverse to the same according to the Law of the Land, but were enforced and constrained to sue their * Livery of the same out of the hands of the said late King, whereby they were, and be concluded to say, that the said Lands be holden of the King in Chief, to their great loss and hindrance, where in truth they were not holden of the said late King, ne of any his Progenitors. Wherefore be it enacted, ordained and esta-

ron, and the Court of Wards, in *Holmes Case*. 1. That the suing of a general Livery concludeth the heir, and here in appeareth by this Act of Parliament, but otherwise it is of a special Livery, for that, as to the tenure, is but, *ut dicitur*. 2. That this conclusion or Estoppel continueth but during the life of the heir that sueth the General Livery; for Jurors are sworn *ad veritatem dicend*, and are not bound by Estoppels. 3. That by suing of Livery, and the death of the heir, the office is executed, and hath taken his full effect, and therefore the Estoppel expirith therewith, and after the office cannot be traversed. Vide 46 E. 3. fo. 12. 44 Ass. p. 35. *Nota dictum Mowbray ibidem*, *Et un client de Roy*, &c. 1 H. 4. 6. 33 H. 6. fol. 7. per Laiton. Observe well the remedies provided by this particular Act, &c. whereby the Common Law is affirmed.

1 H.8. cap. 8.

3 H.8. cap. 2.

34 E. 3. cap. 13.

36 E. 3. cap. 13.

23 H. 6. 17.

* By the procurement of Empson and Dudley, offices were found in secret places, and men were denied to give in evidence for proof of their rights and tenures.

a See before cap. of the high Court of Parliament.

1 H.8. cap. 12.

* This is intended of a general Livery.

General Livery, 1

concludeth, 119.

a Mich. 7. Jacob

resolved by the

two Chief Justices

and the Chief Bar

blished by the King our Sovereign Lord, the Lords spiritual and temporal, and by the Commons in this present Parliament assembled, and by the authority of the same, that every person and persons having possession of the said Lands contained in the said Inquisitions, or any part thereof, may be admitted to have their traverse to the said untrue Inquisitions, notwithstanding any Livery sued in the time of the said late King, King H.7. And that it be further enacted by the same Authority, that any Livery sued of the same in the time of the said late King, ne any thing contained in the same Livery, be any conclusion after the course of the Common Law, or in any wise hurtful or prejudicial to any person or persons, that shall happen to tend their traverse to the said Office, but that they and every of them shall be admitted to their traverse to the said Inquisitions, and to have like advantage in the Law, as though no Livery had been sued of the same in the time of the said late King, and this at the reverence of God, and in the way of charity, &c. Provided alway, that they, or any of them which shall tend their traverse to any of the said Inquisitions in any manner and form as is aforesaid, shall not be restored to any mean issues or profits of Lands and Tenements comprised in the said Inquisitions.

See the first part of the Institutes Sect. 441. See before Cap. of the High Court of Parliament.

Now touching Liveries which in those days were general, what a world of troubles the subjects suffered for missing of Livery in respect of pretended commissions, and the like, what charging the Subjects with values not found by any Office, nor appearing by any Melius inquirendum with mean rates where none were, or for longer time, then they were due, and the like, and these not recovered by course of Law, but sending for the parties by Purlevants, and by their awful countenance mixt with menaces and threats, drew them to compositions; Which, and other like oppressions and injustice, filled King H.7's Coffers; for by the Close Roll in Anno 3 H.8. it appeareth, that the King left in his Coffers fifty and three hundred thousand pounds, most part in forraign Coin, which in those days was not of least value. Notwithstanding King H.8. at his Parliament holden in Anno 5. of his Reign, Cap. 7. moved for a Subsidy, and was denied it; whereupon an Act was made for taking out of general Pardons, as a mean to bring money to the King. But I perswade my self the Reader will inquire what became of these two wicked men Empson and Dudley. The answer is, that first they were severally indicted as followeth,

§ H.8. cap. 7.

Juratores presentant quod Rich. Empson nuper de London Miles, nuper Consiliarius excellentissimi Principis Henrici nuper Regis Angliæ Septimi, 10. die Maii, anno regni dicti nuper Regis vicesimo, ac diversis vicibus antea & postea apud London, &c. Deum præ oculis non habens, sed ut filius diabolicus imaginans honorem, dignitatem, & prosperitatem dicti nuper Regis, & prosperitatem regni sui Angliæ minime valere, sed ut ipse magis singulares favores dicti nuper Regis adhibere unde magnatem fieri potuisset, & totum regnum Angliæ secundum ejus voluntatem gubernare, falso, deceptivo, & proditorie legem Angliæ subvertens, (inter alia) idem Rich. dictis die & anno apud London in Parochia & Ward prædicta &c. diversas falsas Inquisitiones, & Officia de intrusionibus & alienationibus, de maneris, terris & tenementis, diversis ligeis ipsius nuper Regis inveniri procuravit & excitavit, quod ipsi maneria, terras & tenementa in Inquisitionibus illis specificat de domino Rege in Capite vel aliter tenerent, cum ita non fuit, ac postea cum dicti ligei dicti nuper Regis ad Inquisitiones illas sic facti traversas in Curia ipsius nuper Regis secundum legem Angliæ tendere & allegare voluissent, idem ligei ad traversas illas admitti non potuissent, sed se debiti & legitimis

* Ambldo.

Proditorie legem Angliæ subvertens

Falsas Inquisitiones & Officia, &c.

Ad traversas admitti non potuissent.

legitimis traversis ad officia prædict' faciend' custodivit & retardavit, quousque ipsi cum dicto Rich. diversas & magnas & importabiles fines & redemptiones, tam pro commodo ipsius nuper Regis, quam pro singulari commodo ipsius Rich. fecer', in magnam depauperationem eorundum ligeorum. Et quod prædict' Rich. dict' die & anno in Parochia & Warda prædict', ac diversis vicibus antea & postea, diversos ligeos dict' nuper Regis de dicto domino Rege diversa maneria, terras, & tenementa per servic' Milit' tenent', & mort' antecessor' suis ipsis infra etatem existent', & in custodia dict' nuper Regis ratione tenuræ suæ, cum ad etates legitimas pervenerunt, & debitam liberationem maneriorum, terrarum, & tenementorum suorum secundum formam & legem Angl', ac secundum cursum Cancellariæ ipsius nuper Regis prosequi voluissent, ad hoc recipi non potuissent, sed ad hoc faciend' totaliter negat & exclus' fuerunt, quousque ipsi cum prædict' Rich. diversas magnas & importabiles fines & redemptiones, tam pro commodo ipsius Regis, quam pro commodo ipsius Rich. fecer', in magnam depauperationem eorundem ligeorum ejusdem nuper Regis. (And the conclusion of the Indictment is,) Per quod plures & diversi populi dicti nuper Regis hiis gravaminibus & injustis extortionibus multipliciter torquebantur, in tantum quod populi dicti nuper Regis versus ipsum Regem multipliciter murmurabant, & malignabant in magnum periculum ipsius nuper Regis regni sui Angliæ, ac subversionem legum & consuetudinum ejusdem regni.

Pro singulari comodo ipsius Richardi.

Ad debitam liberationem admitti non potuissent.

The residue of the Indictment concerning other exorbitant oppressions & grievances, are worthy to be read, but concern not the matter in hand.

Quorum vestigiis qui insistant, eorum exitum perhorrescant.

True it is, that in this Indictment [proditorie] was used but for aggravation, and as a preparative to greater offences, for in the same year they were both indicted of high Treason both by the Common Law, and Act of Parliament; and in the 2 year of H.8. they lost both their heads. And albeit in some respects the special Livery is for the benefit of the heir, yet the fees and charges are so great, and the Bonds and Covenants, &c. so many, so intricate, and dangerous, as it were worthy to be redressed, for the ease and quiet of the Fatherless and Widows, (being no benefit to the King, but to fill the purses of Clerks and Officers) by authority of Parliament; and the rather, for that special Liveries were of ancient time, as short as the charges thereof; whereof you may read a notable president, when Wardships and Liveries were in their Cradles, which followeth in these words.

Richardus Dei gratia Rex Angliæ, Dux Normanniæ, Aquitaniæ, Comes Andegaviæ, Archiepiscopis, Episcopis, Abbatibus, Comitibus, Baronibus, Justiciariis, Vicecomitibus, & omnibus Ballivis, & fidelibus suis, ad quos præsens Charta pervenerit, Salutem. Sciatis nos a concessisse, & præsentī Charta nostra confirmasse dilecto & fideli nostro Galfrido filio Petri, & Beatricæ de Saye uxori ejus, tanquam justo & propinquiori heredi, totam terram Comitissæ Will. de Mandevile, quæ ei jure hereditario pertinebat, cum omnibus pertinentiis, & libertatibus, & liberis consuetudinibus suis. Quare volumus, & firmiter præcipimus quod prædicti Galfridus & Beatrix uxor sua, & heredes eorum habeant & teneant de nobis & heredibus nostris totam prædictā terram cum pertinentiis suis, sicut prædict' Comes Will. de Mandevile eam melius, & liberius, & honorificentius, & integrius, & quietius habuit unquam & possedit, in bosco, & plano, viis, semitis, pratis, pascuis, pasturis, aquis, vivariis, stagnis, piscariis, molendinis, turbariis, in advocacionibus Ecclesiarum, in custodiis vascellorum, & donationibus puellarum, & in omnibus aliis locis & aliis rebus. Hiis testibus Waltero Rothomagenfi Archiepiscopo, Johan' Eboracensi Episcopo, Rogero de Pratellis

Vid. in the history of Hoveden, pag. 446. 2 R. 1.

a Nota, concessisse is a sure word in omnem eventum, and will answer to a Livery.

b This Geoffrey Fitzpeter was after Chief Justice of England.

c This William de Mandroile was Earl of Essex.

Dapifero nostro, Rich. de Kanvile, Bertrano de Verduno, Radulpho filio Godfredi Camerar' nostro. Dat. per manum Magistri R. mali catuli clerici nostri, Anno regni nostri secundo, xxiii die Januarii apud Messanam.

Now are we arrived at the said Act of Parliament in Anno 32 H.8. wherein, and in the Statute of 33 H. 8. besides the exposition of the several Lexes, we will observe what alterations these two Acts have made.

[Ordaineth, maketh, establisheth, and erecteth a Court, &c.]
Herein three things are to be observed. 1. That this new Court could not be erected without an Act of Parliament. 2. That when a new Court is erected, it is necessary that the Jurisdiction and Authority of the Court be certainly set down. 3. That the Court can have no other Jurisdiction then is expressed in the erection, for this new Court cannot prescribe.

Pasch. 6. Ja. the
Bishop of Salis-
bury's case.

Pasch. 6. Ja. the case between the King and the Bishop of Salisbury, referred to the two Chief Justices and Chief Baron, by the Lords of the honourable Order of the Garter, was this. King E.4. by his Letters Patents in French, bearing date 10 Octobris Ann. 15. of his Reign, reciting, that where there was no Office of the Chancellor of the Garter, that there should be such an Office of the Chancellor of the Garter, and that none should have it but the Bishop of Salisbury for the time being: We will and ordain, that Richard Beauchampe, now Bishop of Salisbury, should have it for his life, and after his decease, that his Successors should have it for ever. And amongst divers other points it was resolved unanimously, that this grant was void, for that a new Office was erected, and it was not defined what Jurisdiction or Authority the Officer should have, and therefore for the incertainty it was void. Which being reported to the Lords, they were well satisfied therewith, and thereupon the Office was granted to Sir John Herbert the Kings Secretary.

[A Court of Record.] Where it is to be noted, that albeit the proceeding in this Court be in English, yet it is a Court of Record by express words of the Act.

[And shall have also a Seal, &c.] This is also necessary to a Court.

[That all Wards, &c.] This Clause extendeth as well to the Counties Palatines of Lancaster, Chester, and Duresme, as to any other the parts of the Realm of England, but in several manners. For as to the Wards within the Realm of England (out of the said Counties Palatines) the Writ for the finding of the Office, &c. issueth out of the Chancery of England, returnable in the Chancery of England. And as to the Wards in the Counties Palatines of Lancaster and Duresme, the Writ likewise issueth out of the Chancery of England, but is returnable into the Chancery respectively of these two Counties Palatine, and the Chancellors thereof are to transcribe them into the Court of Wards.

V. Rot. Parl. 9 R. 2. nu. 13. the resolution of all the Judges of England what right the Duke of Lancaster had to the Wardship of Isabel the Heir of Tho. of Lathom whom Sir John Stanley had married, for the manor of Lathom holden of him in chief as of his County Palatine. V. 26 H. 8. 9. b. a 14 El. Dier 303. b Mich. 26 E. 1. coram rege. Euck. William de Laudares case. c 8 H. 6. cap. 16. 18 H. 6. cap. 6. d 18 Eliz. cap. 13.

a But for Wards in the County Palatine of Chester, no Writ issueth out of the Chancery of England, but it ought to be found by force of a Writ or Commission out of the Chancery there in the Exchequer, and transcribed by the Chamberlain of that County Palatine into the Court of Wards. b Nos dum hæredes in custodia nostra existunt, indemnes & sine exheredatione conservare tenemur.

c And by this Clause of this Act of 32 H. 8. the power that the Lord Chancellor and Treasurer had for letting of Wards lands, &c. is taken away.

d By the Statute of 18 El. it is enacted, That all Inquisitions and Offices to be found before any Escheator or Commissioners, by virtue of any Writ or Commission, or otherwise within the said County Palatines of the said Duchy of Lancaster, Chester, and Duresme, or any of them, shall be returned by the said Escheators or Commissioners within one month next after the taking of any such Office or Inquisition into such place or places, and to such office and offices, as heretofore they have usually been accustomed to be certified and returned into, upon pain to forfeit for every default 40 li. to the use of our said Sovereign Lady, her heirs, and

and successors. And that the Clerk of the said Duchy of *Lanc*, the Vicechamberlain of the said Earldom of *Chester*, and the Chancellor of the said County Palatine of the said Bishoprick of *Duresme*, or other the said Officers or Ministers within the said Counties Palatines, or their Deputy or Deputies, and every of them for the time being having authority to receive any such Office or Inquisition, to whose hands any such Office or Inquisition shall come to, shall certify or cause to be certified under his or their hands in parchment the true transcript of every such Office or Inquisition taken before any of the said Escheators or Commissioners unto the Master of the said Court of Wards and Liveries, in such like manner, form and sort, as is limited and appointed the Clerks of the Petit Bag in her Highness said Court of Chancery to transcript the same, upon pain to forfeit for every such default 5 l. to the use of our said Sovereign Lady, her Heirs and Successors: which transcript so to be certified shall there remain of Record in like manner and form to all intents and purposes, as the transcripts of other Offices already certified into the said Court by the Clerks of the Petit Bag in her Majesties high Court of Chancery, are used: any Custom, Statute, Act, Proviso or Provisoes heretofore had, made, or used to the contrary in any wise notwithstanding.

The Statute of 32 H. 8. for erection of the Court of Wards extended only to Wards: but the Statute of 33 H. 8. annexeth to this Court Liveries also. Now in what cases the Heir shall be in Ward or sue his Livery, either by the Common Law, or by the Statutes, and specially of 32 H. 8. & 34 H. 8. &c. and of all incidents to the same, you shall read plentiful matter both in the First part of the Institutes, Cap. Escheage, & Cap. Service de Chivalier: And also in the Books of my Reports.

¶ Which the Kings Highness, &c.] Although successors be not here named, yet (Kings Highness) being spoken in his Royal and politic capacity, which never dieth, doth extend to his Successors: otherwise this Court had been dissolved by the demise of H. 8.

^a All the Justices in Ireland certified, Quod homagiū tantū dat secundū consuetudinem terræ Hiberniæ custod' & maritag', licet servitium militare non debeatur.

¶ b Intituled to have] That is by Office to be found.

¶ With their Mannors and Lands, &c.] This Clause extendeth only to the Inheritances of the Ward, and not to any of his goods or chattels, debts or duties, &c. but hereof more shall be said hereafter in his proper place.

¶ In the order, survey and governance of the said Court.] ^c The general words of this Act extend not into Ireland, for that is a divided, and distinct Kingdom, and hath a proper Seal. ^d Not to the Isle of Man, because it is no part of the Realm of England, and out of the power of the Chancery of England, and not to be bound by our Parliament of England, but by special name.

¶ And that the Master of the said Wards.] By this Clause the Master only hath power to award Proses.

¶ Such Proses and Precepts with reasonable pains therein limited, as be now commonly used in the Court of the Duchy Chamber of Lancaster being at *Westm.*] ^e Note, the Duchy of Lancaster was created a County Palatine by Act of Parliament in Anno 50 E. 3. Adeo plene & integre sicut comes Cestrie infra eundem com Cestrie dignoscitur obtinere. And hereupon the Court of Wards is well warranted to be a Court of Equity, and accordingly from the erection hereof it hath proceeded.

¶ f For or concerning the Title of the Kings Majesty.] This is evident.

¶ And that the Master of the Court of Wards for the time being shall make and appoint all and singular particular Receivers, Feodaries, and Surveyors in every Shire, and also fees for the execution of the same under the Seal of the same Office in such wise as the same Officers may be always removeable at the discretion of the said Court.]

Feodarius

^a Mich. 7 E. 1. in Banco.

Rot. 126. Warw. Abbot of Malmesburies case.

^b See 43 H. 8. c. 22. A proviso for the Duchy of Lancaster

^c 14 El. Dier 303.

^d Mich. 14 H. 8.

Tenus per Brundel, Brooke & Fitz. in Keyways Report.

And so was it holden Trin. 40 E. 3. by Popham, Anderson, and Per. a, upon a case referred to them by the Lords of the Council, between the Earl of Derby and the Heirs general.

^e See more hereof in the Chapter of the Court of the Duchy of Lancaster. And Pl. com. fol. 214. & 215.

^f Pl. com. fol. 119. 116. in Townsends case.

* See the first part
of the Inst. Sect. 1.

Feodarius or Feudatorius is derived à Feodo seu Feudo, which in one sense signifieth a * Seigniorie or Tenure: His Office consisteth principally in three things: 1. And principally to be skilful in the knowledge of the Kings Tenures within his Office out of Records and authentical Books. 2. At the finding of Offices to do his uttermost indeavour to manifest the truth concerning the Kings Tenures. 3. After the Office found to survey the Wards lands, and rate it.

See Pl. Com. f. 295.
Carils case.
See Mag. Car. c. 5.
the stock of goods
shall be restored
to the heir.
Glanvil fol. 54.
Fleta li. 1. cap. 11.

* Prærogativa Regis, cap. 3.

¶ Or other cause in any wise touching or concerning any thing appointed to the order of the said Court, for, and on the behalf of our Sovereign Lord the King.] By this Clause, if the Heir within age and in Ward have any goods and chattels, debts, duties, or other thing due unto him, an information may be exhibited by his Majesties Attorney of his Wards for his Majesty on the behalf of the Heir: for this doth touch or concern the value of the Wardship of the body, which is appointed by this Act to the order and survey of this Court, for the value of the marriage is hereby advanced. But if the Heir at the death of his Ancestor be of full age, seeing the primer seisin is certain, no suit can be in this Court for any goods, chattels, debts, &c. belonging to the Heir of full age: * for this doth not in any wise concern any thing appointed to the order of this Court, viz. neither the Wardship of the body, or of the lands of the Heir.

¶ Also be it enacted that the said Attorney, Receiver General, and Auditors, &c.] The Judges of this Court are the Master, the Surveyor, the Attorney, Receiver General, and the Auditors of that Court. For the words of the Statute of 32 H. 8. are, That the said Attorney, Receiver General, and Auditors, shall diligently from time to time attend upon the said Master in the said Court for the hearing and ordering of matters and causes, &c. and the Statute of 33 H. 8. hath added the Surveyor in the second place in that Court: and albeit honoris causa, they are to attend on the Master, as the chief and principal Officer of the said Court, for so he is styled by both the said Statutes: yet such attendance is for the hearing and ordering of matters and causes, &c. which maketh them Judges. And see the Dath of the Surveyor, which proveth his Office to be judicial: for by the Statute of 33 H. 8. his Dath is (*inter alia*) That he shall minister equal justice to rich and poor, &c. and that he take no gift or reward for any matter depending, &c. in that Court. And the like Dath in effect taketh the Attorney, the Receiver General and Auditors, by the said Act of 22 H. 8. And so it was resolved in Auditor Curles case when Robert Earl of Salisbury was Master of the Wards and Lord Treasurer of England.

Hil. 7 Jac. lib. 11.
fol. 2 & 3 in Auditor Curles case.

See the Statute of Lincolne 29 E. 1. Stanf. Præ. Regis Ca. Rescifer. See a notable case upon that Statute within three years after the making thereof. Hil. 32 E. 1. Coram Rege. Northampton Jorden Twinewilkes case.

At the Parliament holden 18 Jacobi Regis it was moved on the Kings behalf, and commended by the King to the Parliament for a competent yearly rent to be assured to his Majesty, his Heirs and Successors, that the King would assent that all Wardships, primer seaisins, reliefs for tenures in capite, or by Knights Service should be discharged, &c. Wherein amongst certain old Parliament men these thirteen things did fall into consideration for the effecting thereof.

1. That it must be done by Act of Parliament, and otherwise it cannot be done.

2. That all Lands, Tenements, Rents, or Hereditaments, holden of the King, to be holden by fealty only, as of some honour, and such rent, as is now due.

3. That all lands holden of Subjects, Bodies Politick or Corporate, by Knights service to be holden by fealty, and such rent, as is now due: for if lands should be holden of them by Knights service, the same might come to the King.

4. All Subjects, Bodies Politick and Corporate to be disabled to take any Lands,

Lands, Tenements, Rents, or Hereditaments of the King, his Heirs, or Successors by any other tenure, then by fealty only, and yearly rent, or without rent of some honour.

5. No Subject, Bodies Politick or Corporate to create by any license, or any other way or means, any other tenure than by fealty and rent, or without rent upon any estate in fee simple, fee tail or otherwise.

6. In respect of the said discharge and freedom of the subjects and their posterities, and that they shall be also discharged thereby of fines and licenses of alienations, respect of homage and reliefs; * a Competent rent to be assured to the King, his Heirs and Successors of greater yearly value then he or any of his predecessors had for them all, which rent is to be inseparably annexed to the Crown, payable at the Receipt only.

* First search must be made what the King hath been answered for these, &c.

7. A convenient rent to be assured to the Lords for every Knights fee, and so ratably.

8. Commissions for the finding out of the tenures of the King, and the Subject to be returned, &c.

9. Ideots and Madmen to be in the custody of some of their kindred, &c. and not of the King, his Heirs or Successors.

10. The Court of Wards to be dissolved with Pensions to the present Officers.

11. Provision to be made for regulating of Gardians in Storage, and that the Ancestor may appoint Gardians, &c. and that no Gardian shall make a grant to the King.

12. Provision to be made that Bishops shall continue Lords of Parliament, notwithstanding their Baronies be holden in Storage.

13. That the Act shall be favourably interpreted for discharge of all Wardships &c.

Which motion, though it proceeded not to effect, yet we thought good to remember it, together with these considerations; * hoping that so good a motion tending to the honor and profit of the King and his Crown for ever, and the freedom and the quiet of his Subjects and their posterities, will some time or other (by the grace of God) by authority of Parliament one way or other take effect and be established.

* *Spes est vigilantis somnium.* Hope is the dream of a waking man.

And we will conclude this Chapter with holy Scripture: Deus est pater Orphanorum, & Judex viduarum. And again, Deus custodit advenas, pupillum, & viduam suscipiet. And lastly, In Deuteronomy 27. 19. Maledictus est qui pervertit judicium advenæ, pupilli, & viduæ.

Psal. 46. 9. & 67. 6. Deut. 27. 19.

CAP. XXXVI.

The Court of the Duchy Chamber of Lancaster at Westm.

Foreshuch (as it hath been said) the Court of Wards hath some reference to this Court of the Duchy, we thought it fit to treat of this Court of the Duchy next after the said Court of Wards, for that it may give some light thereunto. Now for that the County of Lancaster is a County Palatine, it shall be necessary to shew the beginning and erection thereof.

Rot. Pat. Anno
29 E. 3.

Rot. Par. 36 E. 3.
nu. 36, 37.
Rot. Pat. Anno
36 E. 3.

Rot. Pat. Anno
50 E. 3. See the 2.
part of the Inst.
Mag. Cart. c. 31.
32 H. 6. fol. 13. the
King may make a
County Palatine
by his Letters Pa-
tents without Par-
liament.

^a De assensu Præ-
latorum & proce-
rum. 12 E. 4. 16.
^b Five things to be
observed for ere-
cting a County
Palatine.

1 Cancellaria.
2 Brevia sub sigil-
lo suo.
3 Justiciarios suos
tam ad Placita
Coronæ quam alia
placita, &c.
4 Quæcunq; alia
jura regalia ad
Com' Palatinum
pertinentia.

5 Adeo libere &
plene prout com-
es Cestrie.
See 19 H. 6. 12.
11 E. 4. 8.

^c 26 E. 3. 59. b.
Divers have Coun-
ties Palatines that
are not Earls, as
shall appear here-
after.

King Edward the 3d created John his fourth son Earl of Richmond, Anno Domini 1355. He 19 Maii Anno Domini 1359. married Blanche youngest daughter of Henry Duke of Lancaster (the second Duke that England saw.) Duke Henry died of the Plague, An. 35 E. 3. At the Parliament holden An. 36 E. 3. the King in full Parliament did give his son John with a sword, and set on his head a Cap of Fur, and upon the same a circle of Gold and Pearls, and named him Duke of Lancaster, and thereof gave to him, and to his heirs males of his body, and delivered him a Charter.

In full Parliament, An. 50 E. 3. the King erected the County of Lancaster a County Palatine, and honored the Duke of Lancaster therewith for term of his life in these words.

Edwardus Dei gratia, &c. Sciatis quod si nos debita consideratione pensantes gestus magnificos cunctorum qui nobis in guerra nostra laudabiliter & strenue servierunt, ipsos desideremus honoribus attollere, & pro veribus juxta merita præmiare, quanto magis filios nostros, quos tam in sapientia, quam in gestu nobili alios præcellere conspiciamus, & qui nobis locum tenuerunt, & tenere poterunt potiore, nos convenit majoribus honoribus & gratiis prærogare? Considerantes itaque probitatem strenuam, & sapientiam præcellentem charissimi filii nostri Johannis Regis Castellæ & Legionis, Ducis Lancastrie, qui laboribus & expensis semper se nobis obsequiosum exhibuit pro nobis pluries in necessitatibus intrepide se guerrarum discriminibus exponendo, & volentes eo prætextu, ac desiderantes eundem filium nostrum aliquali commodo & honore ad præsens (licet non ad plenum prout digna merita exposcunt) remunerare; ex certa scientia nostra, & læto corde a de assensu Prælatorum & Procerum in instanti Parlamento nostro apud Westm. convocati existenti: b Concessimus pro nobis & hæredibus nostris præfato filio nostro quod ipse ad totam vitam suam habeat infra Comitatum Lancastrie Cancellariam suam, ac Brevia sua sub sigillo suo pro officio Cancellarii, deputando, consignando Justiciarios suos tam ad Placita Coronæ, quam ad quæcunque alia Placita communem legem tangentia, tenenda, ac cognitiones eorundem, & quascunque executiones per breviam suam & ministros suos faciendas. Et quæcunque alia libertates & jura regalia ad comitatum Palatinum pertinentia, adeo libere & integre sicut comes Cestrie infra eundem Comitatum Cestrie dignoscitur obtinere, &c.

^c But it appeareth by the book of 26 E. 3. 59. b. that the said Henry Duke of Lancaster had the like grant; for there in a Præcipe the tenant vouched, and that he might be summoned in the County of Lancaster, and the Vouchee challenged, because in the County of Lancaster the Kings writ did not run, sed non allocatur, but a Writ sent to the Duke or to his Lieutenant to summon the Vouchee in the same manner as it should be done in Chester. Vid. 39 E. 3. Voucher 198.

It is called Comitatus Palatinus, a County Palatine, not à Comite in respect of the dignity of an Earl, but à Comitatu, & à Palatio Regis, because the owner thereof, be he Duke or Earl, &c. hath in that County Jura regalia, as fully as the King

King had in his Palace, from whence all Justice, Honours, Dignities, Franchises and Privileges, as from the fountain at the first flowed. Neither by this Chapter was the Duke of Lancaster created Count Palatine, but the County was made a County Palatine. The power and authority of those that had County Palatines was King-like, for they might pardon Treasons, Murders, Felonies, and Outlawries thereupon. They might also make Justices of Eire, Justices of Assise, of Gaol-delivery, and of the Peace. And all original, and judicial Writs, and all manner of indictment of Treasons and Felony, and the process thereupon was made in the name of the persons having such County Palatine. And in every Writ and Indictment within any County Palatine, it was supposed to be contra pacem of him that had the County Palatine. But these and some others are taken away from them that have such Counties Palatines, and annexed to the Crown, and all Writs to be made in the Kings name, but the Teste is in the name of him that hath the County Palatine: and they shall have forfeitures of lands and goods for high Treason, which forfeiture accreteth by the Common Law. But for Treasons or forfeits given after the erection of the County Palatine by any Act of Parliament, they shall not have them.

Justices of Assise, of Gaol-delivery, and of the Peace, are, and ever since the erection of the County Palatine of Lancaster, have been made and assigned by Commission under the Seal of the County Palatine of Lancaster.

In the County Palatine of Lancaster fines are levied with three Proclamations, &c. before the Justices of Assise there, or one of them: and all recoveries to be had of any lands or tenements in the County Palatine are to be had in the Court of that County Palatine, and cannot be had at Westminster.

a In trespasss in the County Palatine of Lancaster, the Defendant pleaded a forrain release, the Court prefixed a day to the parties in Bank, the Record must be removed by Certiorari in Chancery, and by Mittimus into the Bench, there to be tried.

b If issue be joined in the Kings Bench, or Common Bench triable in the County Palatine of Lanc', it shall be tried in the County of Lanc' and remained hither.

c Where a release or other special deed is pleaded in bar in any Court at Westminster, within a Franchise where the Kings Writ runneth not, it shall be tried where the Writ is brought. See the books quoted in the margin. And in this variety of opinions I hold the Law to be, that this Statute of 9 E. 3. extends not to cases when any other issue is joined triable in the County Palatine or other Franchise; And I ground my opinion upon the resolution of all the Judges of England in the Erchequer Chamber, in Anno 32 H. 6. 25. See 39 H. 6. 21, 22. 21 H. 7. 33. 21 E. 4. 33, 34, 35, 36.

Vid. Lib. Intr. fo. 81, 82. pl. 8. Henry Parayes case in debt, In Camera Guildhall Civitatis London.

d King H. 4. by his Charter by Authority of Parliament, Anno primo of his Reign, doth sever the possessions of the Duchy, &c. from the Crown: And that which John of Gaunt held for life, is established for ever, and especially by the Statutes of 1 E. 4. and 1 H. 7. hereafter mentioned: and this separation H. 4. made, for that he knew he had the Duchy of Lancaster (par multis regnis) by sure and undefeasible title: and he could not be both Rex and Dux, but specially that his title to the Crown was not so assured, for that after the decease of R. 2. the right of the Crown was in the heir of Lionel Duke of Clarence, second son of E. 3. John of Gaunt Father of H. 4. being the fourth son: and therefore he intended not, that by the Law of the Crown the Duchy should go with the Crown, and that he should be seised thereof in the right of the Crown, as the King afterwards was of the possessions of the Duchy of York, Carlisle of March, and others.

Humphrey de Bohun Earl of Hereford, Essex and Northampton being the first and last Earl of that name, and seised of large possessions in England and Wales, had issue two Daughters; * Eleanor the eldest married to Thomas Duke of Glouc', and Mary married to the Earl of Hertford.

20 H. 7. 68. 3 s.
27 H. 8. cap. 24.
Pasch. 12 Eliz.
Dier 288, 289.
27 H. 8. cap. 24.
37 H. 8. ca. 19.
36 H. 6. fo. 33.
9 H. 7. fo. 12.
22 H. 6. 48.
27 E. 3. 84.
21 H. 7. 33.
39 H. 6. 21, 22.
19 H. 6. 12.
32 H. 6. 25.
19 E. 3. trial 66.
45 E. 3. Visne 50.
69 E. 3. cap. 4.
8 Ass. 27. 10 E. 3.
41. 19 H. 6. 12, 13.
21 E. 4. 8. a. & b.
27 E. 3. 84.
46 E. 3. Visne 53.
Per tous les Justices.
10 H. 4. 40.
10 H. 6. 15, 16.
Per Martyn.
8 H. 6. 3. per Strange.
Lib. Intr. Rastal. fo.
d Rot. Pat. 1 H. 4.
intituled Carta
Regis H. 4. De separatione Ducatus
Lancastrie a Corona
authoritate Parliamenti anno regni sui primo.
e Rot. Par. 1 E. 4.
Pl. Com. 219. b.
* Vide Rot. Parl.
1 H. 6. Partition
recited an. 9 H. 5.
between H. 5. and
the said Eleanor.

Rot.Par.Anno
2 H.5.nu.30.
3 H.5.nu.15.
confirmed, and
that no Land
should pass of
Duchy, but under
the Duchy Seal.
2 & 3 Ph. & Mar.
cap.20.
a See the 1. part
Inst.Se.8.
b Rot.Par. 1 E.4.
nu.26.
Pl.Com.222.
Vid.l.f.5. the
Princes case.

c Rot.Par. 1 H.7.
* Nota his heirs
without saying
(Kings of England)
as E.4. did.
21 E.4.60.
Vid. Dier 1 El.
168.b.
d 32 H.8.cap.20.
1 E.6.cap.14.
1 El.cap.31.
e Rot.Par. 9 R.2.
nu.13.
28 H.8. Brook
Livery 55. Livery
within the County
Palatine, but not of
a tenure without.
26 H.8.9.

Vid.33 H.8.c.39.
22 H.8.c.20.
3 E.6.cap. Custos
Rotulorum.
f 2 & 3 Ph. & Mar.
cap.20.

21 E.4.60.71.
Pl.Com.219.

Vid.33 H.8.ca.39.
which see before
in the Chap.of the
Court of Wards.
See 27 H.8. ca.11.
there also is a
Chancellor of the
County Palatine.

Hil. 1 E.6. Brook
Travers 53.

It is enacted that all the Mannors and Hereditaments which descended to H.5. after the decease of the said Mary his Mother, as Son and Heir unto her, should be dissevered from the Crown of England, and annexed to the Duchy of Lancaster, and to be of the same nature, as by the Kings Letters Patents established by Parliament there appeareth: where you may read of many Franchises and Liberties belonging to the Duchy.

a Here it is to be observed, that albeit these possessions descended to King H.5. as heir to his Mother, yet he was thereof seised in Jure Coronæ, and therefore this Act dissevereth them from the Crown.

b The Duchy of Lancaster as separated, &c. is by Act of Parliament assured to E.4. and his heirs Kings of England. By this Act all intails of the Duchy, or of any Land annexed thereunto are cut off, and by this made fee simple to E.4. and his heirs Kings of England. In an Act of Parliament without question this limitation of a fee simple is good. See the whole Act.

c It is enacted that H.7. should have, hold and enjoy to him and his* heirs forevermore the County Palatine of Lancaster, and all Honors, &c. By which Act also all former intails are cut off, and in this state doth the Duchy stand at this day. d All Lands, &c. parcel of this Duchy given to the King by the Statute of Monasteries, Chantries are still within the survey of the Duchy. Within the County Palatine of Lancaster, the Duke having Jura Regalia, his Jurisdiction and Privileges therein were very great.

e The Duke of Lanc' complaineth by mouth to the King, Bishops, and Lords in full Parliament; That where after the death of Thomas of Lathom who held the Mannor of Lathom in the County of Lanc' of the said Duke in Chebage, whereby the Mannor was seised into the hands of the said Duke of Lancaster according to his County Palatine of Lancaster, yet notwithstanding John Stanley Knight as in the right of Isabel his wife, Daughter and Heir of the said Tho. had entred, and taken the profits of the said Mannor without any Livery or other suit made in the Chancery of the said Duke, for which he prayed remedy. After which, upon full advice of the Justices of both Benches, and others of the Kings learned Council, it was declared in the said Parliament, that the entry of the said John into the Mannor, as aforesaid, was unlawful, and that the said John ought to make suit by petition, or otherwise in the Chancery of the said Duke for the Livery of the said Mannor in such case to be sued for.

f Of the Franchises and Liberties belonging to the County Palatine of Lanc' you may read Rot.Par. 2 H.5. Ubi supra.

g Lands to be annexed to this Duchy under the Great Seal shall be as good, as if it had been annexed by Parliament.

See the Statute of 5 El.cap.23. concerning Writs of Significavit, and Excommunicato capiendo.

Lands within the County Palatine should pass by the Dukes Charter without livery of seisin or attornment, but of Lands parcel of a Mannor annexed to the Duchy without the County Palatine, there ought to be livery of seisin, and attornment of Tenants, and in the same degree is it in the Kings case. The reason hereof is, for that the County of Lanc' was a County Palatine, and the Duke then had Jura Regalia.

The proceeding in this Court of the Duchy Chamber at Westm. is as in a Court of Chancery for Lands, &c. within the survey of that Court by English bill, &c. and decree; but this Chancery Court is not a mixt Court as the Chancery of England is, partly of the Common Law, and partly of Equity, as hath been said. See before in the Chapter of the Court of Chancery.

The proces is by Privy Seal, Attachment, &c. as in the Chancery.

The Officers of this Court be the Chancellor, the Attorney, the Receiver general, Clerk of the Court, the Auditors, Surveyors, the Messenger. There is an Attorney of the Duchy in the Chancery, and another in the Exchequer. There be four learned in the Law Assistants, and of Council with the Court.

Where by office a tenure is found of the King ut de Ducatu Lancastria, and in truth

truth it is not so, there needeth no traverse, for the King hath the Duchy * as Duke and not as King, and a man shall not traverse, but where it is found † for the King: Sed aliter utitur in diebus nostris, as it appeareth in the case following.

* In hoc erratum est, as it appeareth in Pl. Com. Ubi supra. † It is found for the King, for he is not Duke.

Le Roy (in droit de son Duchie de Lanc') Seignior, Rich. Hulme seise del Mannor de Male in le Count' de Lanc' tenus del roy come de son dit Duchie per service de Chivalry Mesne, & Rob. Male (seise des terres in Male tenus del Mesne come de son dit Mannor per service de Chivalry) Ten'. Ri. Hulme morist; Apres que mort An. 31 H.8. fuit trove que il morist seise del dit mesnaltie, & que ceo descend al Edmonde son fitz deins age, & trove le tenure avandit, &c. & durant le temps que il fuit in gard Rob. Male le ten' morist: apres que mort An. 35 H.8. fuit trove per office que Rob. Male morist seise del dit tenancy peravaile, & que ceo descend al son fitz & heir deins age, & que le dit tenancie fuit tenus del roy come del dit Duchy per service de Chivalrie (ou in veritie ceo fuit tenus del Edm. Hulme adonques in gard in le roy come del dit mesnaltie,) per que le roy seisi le gard del heire le ten' & puis 4 Jac. Regis nunc apres le mort de Rich. Male que fuit lineal heire del dit Rob. Male, per un auter office trove fuit que le dit Rich. morist seise del dit tenancy, & ceo teignoit del Roy come de son Duchy per service de Chivalry son heire deins age, Sur ceo Rich. Hulme cousin & heire del dit Rich. Hulme, ad preferre un bill destre admit a son travers de cest darrein office trove in An. 4 Jac. Le question fuit, le quel l'office trove in 35 H.8. soit ascun estoppel al dit Hulme a traverser le darrein office, ou si le dit Hulme serra chasc primerment a traverser l'office de 35 H.8. Et fuit object que il doit primerment travers l'office in 35 H.8. come in le case de 26 Ed.3. fol.65. que si 2. fines sont levz de terre in ancient demesne, le Seignior de que la terre est tenus, doit aver brieve de discent a reverser le premier fine, & in ceo le 2 fine ne serra barre. Et que le premier office estoppera cy longe come ceo remaine in force. A que fuit respond & resolve per les 2 Chief Justices, & Chief Baron, & le Court de Gards, que le trover dun office nest pas ascun estoppel, car ceo nest que enquest d'office, & le party greve avera travers a ceo come ad estre confesse, & pur ceo sans question ceo nest pas estoppel; mes quant office est trove fausement que terre est tenus del Roy per service de Chivalry in capite, ou in verity la terre est tenus del auter Seignior, ou del Roy mesme in Socage, si le heire sua general livery, est tenus in 46 E.3.12. per Mowbray & Persey que il n'averira sute apres d'averre que la terre nest pas tenus del roy, &c. mes ceo nest forsque estoppel al heire mesme que sua la livery & ne concludera son heire: Car issint dit Mowbray mesme, expresment in autiel case in 44 Aff. pl.35. que estoppel per suer de livery estoppera solement mesme le heire durant son vie: Et in 1 H.4. fol.6.b. la le case est mysse de expresse confession & suer de livery per lissue in tail sur faux office, & la est tenus que les Jurors sur novel Diem clausit extremum apres le mort de tiel heire sont alarge solongne lour conscience a trover que la terre nest pas tenus, &c. car ilz sont jure ad veritatem dicendam, & lour trove est appel veredictum quasi dictum veritatis: quel reason auxi serve quant le heire in fee simple suist livery sur faux office que les Jurors apres son mort doivent trover solongne le verity, issint est dit in 33 H.6. fo. 7. per Laicon que si 2 soers sont trove heires, dont l'un est bastard, silz joine in sute de livery, cesti que joine ove le bastard in livery ne alledgera bastardy in l'aut,

Hulmes case, Mich. 7 Jac. in Curia Ward. Travers de office. Estoppel per suer de livery.

26 E.3. fol.65

46 E.3.12

44 Aff. pl.35

1 H.4.6.b.

33 H.6. fol.7. per Laicon.

mes nul Livre dit que lestoppel indurer' plus longement que durant son vie. Et quant livery est sue per un heire, le force & effect del record de cest livery est execute & determine per son mort & pur ceo le estoppel expirer' ove le mort le heire; mes ceo est destre intend dun generall livery, car special livery ne concludera omnino, come appear apres. Les parols de generall livery, quant le heire est trove de pleine age, sont. Rex Escaetori, &c. Scias quod cepimus homagium I. filii & hæredis B. defuncti de omnibus terris & tenementis quæ idem B. pater suus tenuit de nobis in Capite die quo obiit, & ei terras & tenementa reddidimus. Et ideo tibi præcipimus, &c. eidem I. de omnibus terris & tenementis prædict', &c. plenam seisinam habere fac', &c. Et quant le heire fuit in gard a son plein age, le briefe de livery dirra. Rex, &c. Quia I. filius & hæres B. defuncti, qui de nobis tenuit in capite, ætatem suam coram te sufficient' probavit, &c. cepimus homagium ipsius I. de omnibus terris & tenementis quæ idem B. pater suus tenuit de nobis in Capite die quo obiit, & ei terras & tenementa reddidimus: Et ideo tibi præcipimus, ut supra. Quel brief est le sute del heire & pur ceo coment que tous les parols del brief sont les parols le Roy (come tout les briefs le Roy sont) & coment que le brief de livery est general, de omnibus terris & tenementis de quibus B. pater I. tenuit de nobis in capite die quo obiit, sans direct affirmac' que ascun Mannor in particuler est tenu in capite, & nien obstant que ceo nest forsque prosecution dun brief le Roy, & nul judgment sur ceo, uncore intant que generall livery est foundue sur loffice, & per loffice fuit trove que divers terres & tenements fuer' tenus del Roy in capite, a cest cause le fuer de cest brief concluder le heire solement que fust le livery, & apres son mort les Jurors in novel brief de Diem clausit extremum sont alarge, come est avandit, & si cesti Jury trove fausement tenure del Roy, auxi le Seignior de que la terre est tenu poe travers cest office, ou si terre soit tenu del Roy, &c. in Socage, le heire poe travers cest darrein office. car per ceo il est greve solement, & ne travers le primer office, & quant le pier fust livery & mort, le conclusion est execute & past come est dit adevant. Et nota, la est un special livery, mes ceo procede de grace le Roy, & nest pas sute le heire, & le Roy poe grant ceo ou al plein age devant ætate probanda, &c. ou al heire deins age come appiert in 21 E. 3. 40 & ceo est general, & ne affirm directment ascun tenure come le general livery fist, mes ove un, ut dicitur, & pur ceo nest ascun estoppel sans question. Et al common ley speceal livery poe aver estre grant devant ascun office trove, mes ore per lestatnt de 33 H. 8. ca. 22. est purveu, That no person or persons having Lands or Tenements above the yearly value of 5 l. shall have or sue any livery before Inquisition or Office found before the Escheator or other Commissioner, mes per un' expresse clause in mesme latte, livery may be made of the Lands and Tenements comprised or not comprised in such offices. Issint si office soit trove dascun parcell, &c. ceo suffist, & si le terre trove, in loffice nexcede 20 l. donques le heire poe fuer general livery apres office ent trove, come est avandit; mes si la terre nexcede 5 l. per annum, donques general livery poe estre sue sans office ent trove per garrant del Master de gards, &c. Vid. Dier 23 El. 377. que le Roigne, ex debito Justitiæ, nest hy a cest jour puis le dit Act de 33 H. 8. a graunter special livery, mes est a son election a grant special livery, ou a chaser le heir a un general livery.

Fuit

21 E. 3. 40.

46 E. 3. 33.

46 Ass. p.

47 E. 3. 21.

29 Ass. p. 8.

33 H. 6. 50.

21 H. 6. 28.

37 H. 8. B. Estoppel

218. 7 E. 6. ibid.

222.

Sec 4. part Inst.

Cap. Pardon.

Mich. 39 & 40

El. fol. 397.

Fuit auxi resolve in cest case que loffice de 35 H.8. ne fuit pas traversable, car son travers demesne prouvera que le Roy aver cause daver gard per cause de gard, & quant le Roy vient al possession per faux office ou aut meane sur pretence dun droit, ou in verite il nad tiel droit, uncore si appiert que le Roy ad ascun auter droit ou interest a aver & tener la terre, la naitraverse ce cest office ou tittle le Roy, pur ceo que le judgment in le travers est, Ideo consideratum est quod manus Domini Regis a possessione amoveantur, &c. Que ne doit estre quant appiert al court que le Roy ad droit ou interest daver la terre, Et ove ceo accord. 7 H.4. fol. 33. in le Countee de Kents case; & que apres general livery sue per le heir de Robert Male le office ne poet estre traverse per son heir: Et issint auxi fuit resolve per lassistantis del court de Gards in Scurfields case in Curia Wardorum. Tr. 8 Jacobus.

What Leases may be made of lands, &c. within the survey of the Duchy of Lancaster; See the Ordinances of the Court of Duchy concerning Leases to be made, &c. Anno 20 H.6.

See also Dier Mich. 6 & 7 Eliz. the resolution of all the Judges concerning Leases made by the Chancellor of the Duchy Chamber. And if the Lease either in possession or reversion be made under the Duchy Seal, Quod Dominus Rex de advisamento & assensu concilii Ducatus Lancastria dimittit, &c. the Lease is good, although in truth the Chancellor made it, and put to the Seal of the Duchy. For such Leases in the Duchy Seal, or under the Seal of the County Palatine of lands within the same, are of as great force as lands of the Crown under the Great Seal.

Albeit by special provision and construction, to a grant of lands and tenements parcel of the Duchy of Lancaster that lye out of the County Palatine, there must be livery of seisin and Attornment, as the case requireth, yet the grant under the Seal of the Duchy is matter of Record in respect of the dignity of the person of the King, and needeth no delivery to make it a deed (as deeds between subjects ought to have) and if the same be denied, Non est factum cannot be pleaded, but Nul tiel Record.

And if the King by his Letters Patents under the Seal of the Duchy doth grant a reversion expectant upon an estate for life or years of lands parcel of the said Duchy lying out of the County Palatine, the reversion doth pass maintain to the Patentee by force of the Letters Patents: but he shall not have an Action of Waste or distrain before Attornment. * For this case is like to the case of a fine between subjects, which is matter of record: and so the Kings Letters Patents under the Duchy Seal are as high a matter of record (if not higher then a fine.) And this tenderth both to the honor of the King and the safety of such as purchase such reversions of the King, that the state of the reversion should pass by those Letters Patents: otherwise if the Patentee dye before Attornment the Letters Patents should be void, and the validity of the Kings grant should depend upon the pleasure of the lessee, and many inconveniencies should thereupon follow. And all this appeareth by that great and grave resolution of the case of the Duchy of Lancast reported by Dr. Plowden, that no statute now in force doth separate the Duchy from the person of the King, nor to have the person of the King separate from the Duchy, nor to make the King Duke of Lancaster having regard to the possessions of the Duchy, nor to alter the quality of the person of King H.7. but only that the King should have to him and to his Heirs the said Duchy separte from the other possessions; in which case the Duchy at the least is joynt to the person of H.7. and to his Heirs, and the person of the King remain as it did before, for nothing is said to the quality of the person of the King, nor to the alteration of his name. And the person of the King shall not be infeebled because the Duchy is given to the King & his Heirs, but remain always of full age, as well to gifts & grants by him made, as to administration of Justice: Whereupon it was resolved, that Leases made by E.6.

being

Which case we have rehearsed in the same language wherein we reported it when it was fresh in memory, and never hitherto was published.

Mich. 6 & 7 Eliz. Dier 232.

27 H.8. cap. 11:

2 Provisoes.

2 & 3 Ph. & M.

cap. 20.

37 H.8. cap. 16.

21 E.4. fol. 60.

Rot. Parl. 1 H.4. nu. 81.

Vide Cartam H.4. de separatione Duc. Lanc. a Corona authoritate Parl. Anno Regni sui 1.

Rot. Parl. 3 H.5. nu. 15.

Rot. Parl. 1 E.4. nu. 26.

Rot. Parl. 1 H.7. nu. 2. Sess. 1.

2 & 3 Ph. & Mar. cap. 20.

P. 10 H.4. fol. 7.

non qmittas, &c. per prerogative.

Rot. Parl. 2 H.5. nu. 30.

23 H.6. nu. 17.

12 E.4. nu. 7, 8.

Dier Mic. 6 & 7. Eliz. ubi supra.

* Lit. Sect. 580. 1 part of the Inst. fol. 320.

Plowd. Com. 221. b. Vide Rot. Parl.

1 H.4. nu. 81. record.

being within age of lands, either within the County of Lancaster or without parcel of the Duchy (the Royal and politick capacity of the King being not altered) were not voidable by his nonage: A just resolution, and tending to the safety and quiet of Purchasers and Fatmozs; and proveth directly that the Royal and politick capacity of the King being not altered (as to these possessions) the Letters Patents of the King of these possessions under the Duchy Seal are of Record: and we find no opinion in our Books, or any thing in any Record, that we remember, against this. So as the Law concerning this point is, That for grants of reversion by Letters Patents under the Kings Seal of the Duchy of Lancaster, there must be Attoznament for lands out of the County Palatine to make a privy, as in case of a fine for the action of waste or distress: but of lands within the County Palatine, the reversions pass by Letters Patents under the Seal of the County Palatine, both for the estate and for the privy of the action and of the distress: and yet the Seal is as high a matter of Record in the one case as in the other. And herewith agreeth the continual practise in the Court of the Duchy of Lancaster. For if a reversion be granted under the Duchy Seal in fee or in tail, &c. of the lands of this Duchy expectant upon a Lease for years, life, &c. a Writ in English is usually granted in the Kings name under the Duchy Seal reciting the grant, and commanding the particular Tenant to attorn: or if it be of a Pannoz in possession, a Writ likewise in English is usually granted commanding the Tenants generally to attorn.

The Seal of the Duchy of Lancaster remains with the Chancelor at Westm. And the Seal of the County Palatine remains always in a Chest in the County Palatine under the safe custody of the Keeper thereof. All grants and leases of Lands, Tenements, Offices, &c. in the County Palatine of Lancaster shall pass under that Seal and no other: and all grants and leases of Lands, Tenements, Offices, &c. out of the County Palatine and within the Survey of the Duchy, shall pass under the Seal of the Duchy, and no other: otherwise such grants and leases shall be void by the apparent intention of the Act.

See also Pl. Com. 222. notable matter concerning leases made of lands within the Survey of this Court, the King being within age, &c. resolved and decreed to be good.

This County Palatine was the youngest brother, and yet best beloved of all other, for it had more Honors, Pannozs, and Lands annexed unto it, then any of the rest, by the House of Lancaster, and by H. 8. and Queen Mary, albeit they were descended also of the House of York, viz. from Eliz. the eldest Daughter of E. 4.

* For the great Royalties, Franchises, Liberties, Priviledges, Immunities, Quietances, and Freedoms, which the Duke of Lancaster had for him and his men and tenants, see Rot. Parl. die Lunæ post Octab. Sancti Maritini An. 2 H. 5. all which are established, ratified and confirmed by authority of Parliament, necessary to be known by such as have any of these possessions.

Vid. 27 H. 8. c. 11. for the several Seals. 23 H. 8. c. 3. Com' of Sewers under the seal of the Duchy and they be Commissioners of Record.

27 H. 8. cap. 16.

Oler ubi supra.

Pl. Com. 222.

* Royalties, Franchises, Liberties, &c. Rot. Parl. 2 H. 5. n. 30. not in print, and established and confirmed, Rot. Parliam. An. 3 H. 5. Bu. 15.

CAP. XXXVII.

Of the County Palatine of Chester.

SEEING the erection of the County Palatine of Lancaster hath reference to the County Palatine of Chester, we have thought good to entreat of it in this place, for that one giveth light to the other.

^a We have spoken of the County of Lancaster raised to a County Palatine by Act of Parliament. We shall now speak of a County Palatine created by prescription.

^b We find that Hugh Lupus son of the Viscount of Averanches in Normandy by his wife William the Conquerors Sister was the first hereditary Earl of England created by his Uncle the Conqueror Earl of Chester, and in the title of a Conqueror, Totumq; hunc comitatum tenendum sibi & * heredibus ita libere ad gladium, sicut ipse Rex tenebat Angliam ad coronam, dedit. † To this Earldom is annexed the County of Flint in Wales.

This is the most ancient and most honorable County Palatine remaining in England at this day,* with which dignity the Kings eldest son hath been of long time honored.

By this general grant this Hugh Earl of Chester had Jura regalia within the County, and consequently had Comitatum Palatinum without any express words thereof, and by force thereof he created Eight Cheshire Barons, which was the first visible mark of a County Palatine. That is to say, Robert Fitz-Hugh Baron of Malpas, Richard de Vernon Baron of Scibbroke, William Walbank Baron of Nantwich, William the son of Nigel Baron of Halton, Hamond de Masly Baron of Dunham, Gislebert de Venables Baron of Kinderton, Hugh the son of Norman Baron of Hawardyn, and N. Baron of Stockport.

By the said general grant he had not the patronage and tenure of the Bishoprick of Chester, for thus I read in the Book of Domesday made in the time of this Hugh Earl of Chester. Cheshire. Tenet Episcopus ejusdem civitatis de Rege, quod ad suum pertinet Episcopatum; totam reliquam terram comitatus tenet Hugo Comes de Rege.

^c Britton saith, Voilons nous que Justices Errant soient assignes de les Chapters oier & terminer en chescun Countye, & en chescun Franchise de 7 ans en 7 ans, & autiel poer voilons que nous d Chief Justices de Ireland & Cestre eyent.

^e Within this County Palatine, and the County of the City of Chester, there is, and anciently hath been a principal Officer called the f Chamberlain of Chester, who hath, and time out of mind hath had the jurisdiction of a Chancelor; and that the g Court of Exchequer at Chester is and time out of mind of man hath been the h Chancery Court for the said County Palatine, whereof the Chamberlain of Chester is Judge in equity. He is also Judge of matters i at the Common Law within the said County, as in the Court of Chancery at Westm. for this Court of Chancery is a k mixt Court.

There is also a l Vice-chamberlain, which is the Deputy of the Chamberlain. And there is within the same a Justice called m the Justice of Chester, who hath jurisdiction to hear and determine matters of the Crown, and of Common Pleas. Of fines and recoveries levied and suffered as well within the County Palatine of Chester as of the City of Chester. See the Statutes of 2 E. 6. cap. 28. & 43 Eliz. cap. 15. But of these and other matters concerning this County Palatine we have thought good to set down the resolution of four reverend Judges (whom we knew) upon view of Records and evidences, and mature deliberation thereupon in writing, in these words.

13 E. 3. Vouch. 18.
49 E. 3. 9. 19 H. 6.
12. 36 H. 6. 33. 34.
12 E. 4. 16.
A man may have
a County Palatine
by prescription.
2 E. 4. 17. 18. 22.
12 E. 4. 16. 21 R. 2.
c. 9. Register. 17. a.
b This Lupus did
bear Azur a head
of a Woolf crased,
argent.
* In fee simple.
† 21 R. 2. cap. 9.
* 21 R. 2. cap. 9.
17 E. 4. cap. 1.

These Barons had
within their sever-
al Courts conu-
sans de omnibus
placitis & querelis
in Curia Comitatus
motis, exceptis pla-
citis ad gladium
ejus pertinentibus,
which you may
see at large, Rot.
Inspec. Pat. An.
18 H. 6. parte 2.
m. 34.
c Brit. f. r. b.
27 H. 8. cap. 5.
d Chief Justice de
Chester.
e 27 H. 8. cap. 5.
f Chamberlain of
Chester.
g Court of Exche-
quer.
h Chancery Court.
i At the Common
Law.
k A mixt Court.
l Vice-chamber-
lain.
m The Justices of
Chester.

Sir James Dier,
Weston,
Harpur,
Carns.
10 Feb. 11. Regina
Elizab.

The opinion of Sir James Dier Knight, Chief Justice of the Common Pleas at *Westminster*, Richard Weston and Richard Harpur Esquires, two other Justices of the same Common Pleas, and of Thomas Carns Esq; one of the Justices of the Pleas to be holden before the Queens Majesty, declared and presented to her Highness the 10 day of February Anno Dom. 1568. by vertue of her Majesties Letters to us directed the second day of the same moneth concerning the jurisdiction and liberties of the County Palatine of Chester, and the authority of the Chamberlain, and his Office there: and concerning the controversie between the Lord President and Council in Wales, and the said Chamberlains Office lately grown upon Thomas Radfords case exhibited unto us: as ensueth.

a King H. 7. made
it a County of it
self. Camd. 459. d.
* By prescription.

First, By that which we have seen and considered, the County of Chester (wherein a the City of Chester is now, and by a good time past hath been a County of it self) of * very ancient time before the Reign of King H. 3. hath been, and yet is a County Palatine, with other members thereunto belonging: and so from time to time hath been received and allowed in the Law. And therefore the Laws, rightful usages, and customs of the said County Palatine are to be preserved and maintained.

The Chamberlain
of Chester.

It further evidently appeareth, that by the like time of antiquity and continuance, there hath been and yet is in the said County Palatine one principal or head Officer called the Chamberlain of Chester, who hath, and ever had all jurisdictions belonging to the office of a Chancellor within the said County Palatine.

The Justice of
Chester.

And that there is also within the said County Palatine a Justice for matters of the Common Pleas, and the Pleas of the Crown, to be heard and determined within the said County Palatine, commonly called the Justice of Chester.

Error, foreign plea
& foreign voucher.

We also see that all pleas of lands or tenements and all other contracts, causes, and matters rising and growing within the same County Palatine are pleadable, and ought to be pleaded, heard, and judicially determined within the said County Palatine, and not elsewhere out of the said County Palatine: And if any be pleaded, heard, or judged out of the said County Palatine, the same is void, and coram non Judice, except it be in case of Error, Foreign plea, or Foreign voucher.

Treason and error

Seal of the County
Palatine.

We also see that no inhabitant of the same County Palatine by the liberties, Laws, and usages of the said County Palatine ought to be called or compelled by any Writ or Proces to appear or answer any matter or cause out of the same County Palatine for any the causes aforesaid, but only in causes of treason and error. And the Queens Writ doth not come, nor ought to be allowed or used within the said County Palatine, but under the Seal of the said County Palatine, except Writs of Proclamation by the Statute of E. 6. An. Regni sui primo.

Court of the Ex-
chequer is the
Chancery Court.
Chamberlain
Judge of that
Court.

A Conservator of
the peace.

It doth further appear unto us by good matter of Record to us shewed, that the Court of the Exchequer at Chester is, and by the time of antiquity and continuance aforesaid hath been used as the Chancery Court for the same County Palatine, and that the Chamberlain of Chester is the chief officer and Judge of that Court, and that he is, and time out of mind hath been a conservator of the peace by vertue of the same office, and hath like power, authority, prebeminence, jurisdiction, execution of Law, and all other customs, commodities and advantages pertaining to the jurisdiction of a Chancellor within the said County Palatine of Chester, as the Chancellor of the Duchy of Lancaster hath used, had and ought to have used and executed within the said County Palatine of Lancaster: which more evidently appeareth also by the understanding of the first grant made by King E. 3. to John his son then Duke of Lancaster, whereby he made the same County Palatine of Lancaster, referring the said Duke to have his Chancellor, liberties, and regal jurisdiction to a County Palatine belonging, adeo libere & integre, sicut Comes Cestrie infra eundem Comitatum Cestrie dignoscitur obtinere.

See the grant be-
fore.

Vice-Chamberlain

Also it appeareth unto us that the Vicechamberlain did lawfully and orderly commit to prison Thomas Radford named in the case presented unto us, for that he

he refused to put in sureties of the peace within the said Exchequer upon Affidavit made in that behalf. And that the proceedings of the Council of the Marches touching the enlargement of the said Radford from the said imprisonment, and also their further order and dealing against the said Vicechamberlain was, and is without sufficient authority, and contrary to the Jurisdiction of the office of the said Chamberlain, and the ancient Laws and Liberties of the same County Palatine.

Council of the Marches.

And we do also affirm that the Statute of 34 and 35 H.8. called the Ordinances of Wales, whereby the authority of the Lord President and Council within the Dominions and Principality of Wales and Marches of the same is established and hath the force of a Law, for or concerning the determination of causes and matters of the same, comprehendeth not the Counties of Chester, and the City of Chester, because the same Counties of Chester and the City of Chester be no part nor parcel of the said Dominion or Principality of Wales, or of the Marches of the same.

The President and Council of Wales, and the Marches of the same. The Counties of Chester, and the City of Chester no part of the Marches of Wales.

Hil. 11 Jac. in the Chancery.

Between Sir John Egerton Plaintiff, and William Earl of Derby Chamberlain of Chester and others Defendants, for the trust of an interest of a term in Lands in the County of Chester, these points were resolved by the Lord Chancellor, and by the Chief Justice of England, Justice Dodderidge, and Justice Winche, whom the Lord Chancellor called to be his Assistants as followeth.

First, that the Chamberlain of Chester being sole Judge in Equity, or his Deputy, cannot decide any cause wherein he himself is party, for he cannot be Judex in propria causa, but in that case he may complain in the Chancery of England.

Vid. in the Charter of Durham. Anno 30 E. 1. Coram rege.

Vide 21 H. 3. breve 881. in rationabili parte versus Comitem Cestrie de hereditate D. quondam Comit' Cestrie. Comes dicit quod noluit respondere de terra in Com' Cestrie ubi brevia domini regis non currunt extra libertates suas nisi Cur' consideret, & Consideratum fuit per curiam quod respondeat.

21 H. 3. br'e 881.

2. If the Defendant dwell out of the County Palatine, if any of the County Palatine have cause to complain against them for matter of Equity for Lands or Goods within the County Palatine, the Plaintiff may complain in the Chancery of England, because he hath no means to bring them to answer, and the Court of Equity can bind but the person, for otherwise the subject should have just cause of suit, and should not have remedy: and when particular Courts fail of Justice, the general Courts shall give remedy, ne Curie regis deficerent in iustitia exhibenda.

18 Ass. 382. 13 E. 3. tit. Jurisd. 5 E. 3. 30. 38 H. 6. 6. 7 H. 6. 37. 8 E. 4. 8. 11 H. 4. 27. &c.

3. It was resolved, that the King cannot make any Commission to hear and determine any matter of equity, but matters of equity ought to be determined in the Court of Chancery, whose jurisdiction therein have had continual allowance, and so was it resolved in * Perots case.

* See this case in the Chapter of the Chancery, pa. 87.

4. Upon consideration had of the said Certificate of the Lord Dier, and the said other Judges, it was resolved, that for things transitory though in truth they were emergent within the County Palatine, yet by the general rule of law, the Plaintiff may alledge these to be done in any County where he will, and the Defendant cannot plead to the Jurisdiction of the Court, that they were done, &c. within the County Palatine: but if the Plaintiff suppose the transitory cause of action to be in the County Palatine, that may be pleaded to the Jurisdiction, otherwise it is of things local.

See in the Chapter of the County Palatine of Durham.

An office found by Commission in the nature of a Mandamus issuing out of the Chancery at Westminster before the Commissioners in Com' Cestrie for Lands holden in Capite in the same County, was holden void per consilium curie Wardorum, for it ought to be by Writ or Commission out of the Exchequer in the County Palatine, which is the Court of Chancery there.

If an erroneous Judgment be given before the Chamberlain in the Exchequer in any matter wherein he proceedeth according to the course of the Common law, the writ of Error shall be directed Camerario seu ejus locum tenentis, but if the Judgment be given before the Justice of Chester, then the Writ is directed

J f

Justiciario

Regist. fo. 17. a.

34 H. 6. 42.

6 H. 4. 9. Lib. Intr.

Rast. 272.

Dier 15 El. 320.

321. Dier 18 El.

345. 346.

* Note these general words extend as well to the Chamberlain as to the Justice by the rule of the Regist. Ubi sup.

Justiciario Cestrie five ejus locum tenenti. And note that in a Writ of Error to the * County of Chester, day shall be given by so long time, that three Counties may be holden before the return of the same Writ in the Kings Bench, which is four months, by which time the Justices or Lieutenant within the same County may redress the error, if they will, and this by the usages of the same County; But in a writ of Error upon a fine they have no such power: and the Plaintiff ought to bring the writ of Error to the next County after the Teste, and there it shall be read, Coram Judicatoribus ratione tenurarum suarum ibidem: and the Plaintiff shall assign the Error without praying process against the Tenant or Defendant, but only to pray Judicatores to examine the Error, and if Error be found they may advise thereon, or presently reform it, and award restitution, or by their discretion they may award process returnable at the next County against the Tenant or Defendant ad audiend' errores, (which is reasonable, and necessary to be granted) and so return their own judgment given by them or their Predecessor, and then there is an end of the business, and the Record shall remain there without removing; and by this means they shall save an hundred pound forfeiture to the King. But if they affirm the judgment which is erroneous, their affirmation and the Record ought to be removed into the Kings Bench, if the party Plaintiff be grieved therewith: and if their affirmation be erroneous, although their first judgment was given by their Predecessors, notwithstanding they shall forfeit the hundred pounds. And the party grieved by their affirmation or reversal ought to bring a special Writ of Error peremptory, which shall not be examined by them, for that all this is to be understood where Error in Law is assigned: for upon the Writ of Error first brought, if any Error in fact be assigned, as death of one of the parties, hanging the plea, or the like, which is triable by the County, they cannot hold plea thereof, but return the Record, with the Writ into the Kings Bench. Neither can they hold plea of a release of Errors after the Judgment or the like, for they are only to examine the errors of the Record or Process, and all this doth notably appear in our books. But if no such usage had been, the Record ought to have been removed by the Writ of Error into the Kings Bench, as it ought to be in other cases.

Hil. 29 Eliz.

Egerton the Queens Solicitor moved in the Chancery to have a Certiorari to the County Palatine of Chester for the removing of a Record of Assise taken in that County between Cotton and others Plaintiffs, and Venables and others Defendants, wherein the Recognitors of Assise gave a false verdict, and to the intent that a Writ of Attaint might be brought in the Kings Bench, a Certiorari was prayed. And it was doubted, whether an Attaint did lie in this case, out of the County Palatine. And by the opinion of Wray and Anderson Chief Justices, and Manwood Chief Baron, upon consideration had of the Statute of 23 H. 8. cap. 3. whereby it is enacted in these words, That all Attaints hereafter to be taken shall be taken before the King in his Bench, or afore the Justices of the Common Pleas, and in no other Courts; They resolved and so certified the Lord Chancellor, that for a false verdict given in the County Palatine of Chester, the Attaint ought to be brought either in the Kings Bench or Common Pleas, and not in the County Palatine of Chester, and thereupon a Certiorari was granted for the removing of the Record.

Vid. 3 Eliz. Dier
202. b. Benloes
Rep. 3 Eliz.

Hil. 29 El. Coram
rege, Huddlestons
case, in Brevi de
errore.

Hil. 29 Eliz. Coram Rege. The case was that Queen Elizabeth by her Letters Patents granted the custody of the Castle of Chester to John Paston, and Richard Huddleston Esquires, and the survivor of them; John Paston died, and in a Scire facias against Huddleston in the Exchequer before the Chamberlain, (Glazier then being Deputy Chamberlain) to repeal the said grant, &c. judgment was given against Huddleston that the Patent should be annulled and cancelled; and hereupon Huddleston brought his Writ of Error. And it was objected that before any Writ of Error ought to have been granted, Huddleston ought to have sued to the Queen by petition to have a Writ of Error according to the book in 23 E. 3. fo. 24. But it was answered, that here in this case no inheritance was recovered by the Judgment, and if Huddleston that claimed the office

23 E. 3. fo. 24.
N. B. fo.

office but for term of his life should be driven to his petition, wherein great delay might be used, his life might end before he could obtain his Writ of Error, therefore the Writ of Error in this case was to be granted without any petition: and of that opinion was the whole Court of Kings Bench, and so the Writ of Error did stand.

Judices & Seditores Com Cestrie non consueverunt apponere sigilla sua alicui Pasch 9 E. 2. Coram rege Rot. 32.
recorde in presentia Justiciariorum.

Before the Statute of 34 H. 8. neither the County Palatine of Chester sent 34 H. 8. cap. 13.
Knights to the Parliament, nor Citizens out of the City of Chester.

Before the Statute of 27 H. 8. the Lord Chancellor of England appointed no 27 H. 8. cap. 5.
Justices of Peace, Justices of Quorum or Gaol delivery within the County of Chester.

The Manor of C. in the County of York was holden of the Prince, as of 22 E. 4. Jurisd. 61.
the County of Chester, and that all pleas real and personal rising within the Lib. Int. Rast. 60.
County, or within any parcel of Land holden of the County ought to be impleaded within the said County Palatine: For the King by his Letters Patents may ordain a Court at York, or in any other County which shall have Jurisdiction through the whole Realm, and so it was resolved. Si teneatur immediate or mediate.

The City of Chester was made a County of it self by King H. 7. by Letters Lit. Pat. 6 Apr. 21 H. 7.
Patents, dat. 6 Aprilis 21 of his Reign.

See the Statute of 5 El. cap. 23. Concerning Writs of Significavit and Excom' 5 El. cap. 23.
capiend'. See the Statute of 18 El. cap. 8. making of more Justices then one. 18 El. cap. 8.

By the Statute of 8 H. 6. cap. 10. it is provided, That upon every Indictment 8 H. 6. cap. 10.
or Appeal by which any person dwelling in any other County then there where Vide cap. 13.
such Indictment or Appeal is, or shall be taken of Treason, Felony, and Trespas, &c. before any Exigent awarded, &c. that after the first Writ of Capias, another Writ of Capias shall be awarded directed to the Sheriff of the County whereof he is or was supposed to be conversant in the Indictment, &c. otherwise the outlawry to be void.

In an Appeal in the Kings Bench in the County of Dorset where the Appellæ was demurrant at Chester, proces continued until he was outlawed without any Capias into Chester, and it was objected that the Capias could not issue into Cheshire, for it is a Franchise into which the Kings Writ runneth not. 19 H. 6. 1.
Holden at the Common Law for certain things a Writ shall issue to the Franchise of Chester, as for Treason, and the Statute is made by Authority of Parliament, and is general as well within Franchise as without, and therefore the Act being general shall be taken generally to extend into Chester, Quod conceditur, but this is a leading case.

Vid. Lib. Int Coke, fol. 230, 231, 232. & 296, 297. See an Act of Parliament, Rot. Par. 9 H. 4. nu. 45. touching adjournment in pleas.

CAP. XXXVIII.

Of the County Palatine of Durham.

10 E.3.41.
12 E.3. Vouchee
115. 17 E.3.36.
5 R.2. Trial 54.
13 H.4. Vouchee
39. 11 H.4.40.
18 H.6.33.34.
19 H.6.12.52.
21 E.4.8. 1 Mar.
Stat.2.ca.2.
Rot.Par. 11 H.6.
nn.23.
See Rot.Parl.
Pasch. 21 E.1.
Rot.5. a notable
Record for the li-
berties of the Bi-
shop of Duresme.

This is also a County Palatine by prescription parcel of the Bishoprick of Durham, which was first raised, as it is said, soon after the time of William the Conqueror.

Yet I find that this County Palatine hath been questioned (but with evil success.) For at the Parliament holden Anno 11 H. 6. Thomas Bishop of Durham prayed a Commission under the Great Seal to certain there named, who by vertue thereof sat and inquired at Hartlepole being within his County Palatine of the rights of the County Palatine with all the Dependants. Whereupon Sir William Eure Knight, the Kings Attorney, made divers objections, that the Bishop ought to have no County Palatine, neither liberties Royal. On the contrary part the Bishop produceth his proofs, and the matter on both parts seriously debated. In the end Judgment was given in Parliament for the Bishop, and that the said Inquisitions returned in the Chancery or elsewhere, should be void. See the Record, being very long, and yet worthy the reading.

When the Bishop himself, that ought to do justice and right to others, will do injury and wrong within his County Palatine, and that he cannot be a Judge in his own cause: See a notable Record intituled thus. Recordum coram domino rege porrectum per manus Willielmi de Beresford & Rogeri de Heigham Justiciar domini regis ad querelas infra libertatem Episcopatus Dunelm' audiend' & terminand' assignat in hæc verba.

Pasch. 30 E.1.

Placita apud Dunelm' coram Willielmo de Beresford & Rogero de Heigham Justiciariis domini Regis ad veteres querelas Ricardi Prioris Dunelm' & aliorum hominum Episcopatus ejusdem domini regis prius porrectas & non determinatas audiend' & terminand' assignat.

Northumb.
Dunelm.
* This was Anthony Beak, of that state and greatness as never any Bishop was, Woolsey excepted.

Ricardus de Hoton Prior Dunelm' queritur de * Antonio Episcopo Dunelm', &c. The Record is long, but therein you shall observe several complaints of the Prior against the Bishop, whereupon issues are joined, and verdict given against the Bishop, and Judgments given worthy the reading. By which Record it appeareth that the Bishop had within the County of Duresme Regalitem suam.

I find also another Record in the same Kings time, viz.

Mich. 34 E.1.
Coram rege
Rot.32.

Placita coram domino rege apud Westm' de Termino Sancti Michaelis Anno regni Regis E. filii Regis Henrici 33. finiente, 34. Ro.32.

* Justices of the Bishop.
Per breve vestrum.

*Dominus Rex mandavit breve suum Episcopo Dunelm' in hæc verba, Edwardus Dei gratia Rex Angliæ, Dominus Hiberniæ, & Dux Aquitaniæ venerabili in Christo patri A. eadem gratia Episcopo Dunelm. Salutem. Cum Odeliva filia Richardi de Hurcheworth, Matild. de Swineburne, & Richardus Bouche, & Agnes uxor ejus arramiaverunt quandam Assisam mortis antecessoris infra libertatem vestram Episcopatus predicti, * coram Lamberto de Trykingham, Guyehardo de Charoun, & Petro de Thoresby per breve vestrum versus Galfridum fil' Johannis le Maschun de Herterpole de uno mesuagio, sex tofts & una carucata terre cum pertin. in Hurcheworth Brian. Ac predictus Galfridus Johannem le Maschun de Herterpole intrinsecum versus predict. Odelivam, Matildam, Ricardum & Agnet' inde*

inde vocaverit ad warrant'. Et idem Johan' ten' præd' eidem Galfrido warrantizans Simon' filium Simon' de Mora intrinsecum versus eisdem Odalivam, Matild', Ricard' & Agnet' ulterius inde vocaverit ad warrant'. Ac idem Simon' eadem ten' eidem Johan' warrantizans inde vocaverit ad warrant' versus eisdem Odalivam, Matild', Ricard' & Agn' per auxilium cur' nostræ Aymerum de Rocheford & Julianam uxorem ejus, Johan' Swayne, & Aviciam uxorem ejus, & Tho. de Fishborn juniorem forinsecos, qui terras aut tenementa infra libertatem prædict' aut alibi infra distributionem vestram non habent, per quæ per ballivos vestros libertatis prædict' ad warrant' illam faciend' distringi possunt, ut accepimus. Nos attendentes expediens esse & necesse quod nos super recordo & processu Assise prædictæ plenius certioremur, ut partibus prædictis, quod justum fuerit in hac parte ulterius fieri faciamus. Vobis mandamus quod inspectis recordo & processu præd', si vobis constiterit ita esse, tunc recordum & processum Assise prædict' cum omnibus ea tangentibus nobis sub sigillo vestro distincte & aperte mittatis & hoc breve, Ita quod ea habeamus a die S. Michaelis in 15 dies ubique, &c. partibus eundem diem præfigentes quod sint ibi statuti & recepturi quod Curia nostra consideraverit in hac parte, ut nos finito placito warrant' prædict' in Curia nostra record' & proces' totius negotii memorati vobis remittamus ad procedend' in eodem secundum legem & consuetudinem libertatis prædict'. T. me ipso apud Wynelingfeld 13 die Julii Anno Regni nostri 33. Virtute cujus brevis prædict' Episcopus misit recordum & processum in hæc verba. Placita de Assis apud Dunelm' coram Guyehardo de Charroun & Petro de Thoresby Justiciariis assignat', associat' sibi L. de Trikingham die Martis proximi post clausum Pasch. Anno Regni Regis E. 33. & promot' Domini A. Dunelm' Episcopi 22.

Forcin Voucher.

Si vobis constiterit ita esse.

Assis venit recognitur' si Ricard' de Hurcheworth pater Odelizæ fil' Ric' de Hurcheworth & avus Matildæ de Swinesburne, & Agn' uxor Richardi Bouche fuit seistus in dominico suo ut de feodo de uno mesuagio, sex toftis & una carucata terræ cum pertin' in Hurcheworth Brian die quo, &c. Et si, &c. quæ Galfrid' fil' Joh' le Maschun de Herterpoole. Et sciendum quod tertia pars præd' tenement' excipit eo quod præd' Odaliza alias comparuit in Curia, & modo non sequitur pro parte sua, &c. Et Galfrid' alias venit & dixit, quod ipse tenet prædicta tenementa ad terminum vite sue ex dimissione Johan' de Maschun de Herterpoole & in forma prædicta vocavit ipsum Johan' ad warrant' Simon' fil' & heredem Simonis de Mora, qui modo venit per sum' & ei warrantiz'. Et vocat ulterius inde ad warrant' per auxilium Cur' hic & Cur' Domini Regis Aymerum de Rocheford & Julianam uxorem ejus, filiam & unam heredem Nicholai de Swinburne, Johan' Swaine & Aviciam uxorem ejus filiam & alteram heredem prædicti Nicholai, & Thomam de Fishburne filium Christianæ cohered' prædict' Julianæ & Aviciæ sum' in Com' Northumbr'. Et quia Curia ista jurisdictionem in prædict' Aymerò & aliis warrant' &c. qui exec'

Dunelm. Pater Odelizæ, avus Matildæ.

Simonis

Simonis ex quo quod nondum secutus fuit versus warrantos, &c. Et super hoc idem Simon' profert breve Domini Regis hic de mittendo recordum & processum Assise præd' eidem Domino Regi a die Sancti Michaelis in quindecim dies ubicunq; &c. quæ quidem recordum & processus, & etiam breve Domini Regis prædict' quod habuit record' consut' per prædict' Matild', Ricardum & Agnet' Domino Regi mittitur juxta tenorem brevis sui prædict'. Et idem dies præfixus est partibus coram eodem Domino Rege ubicunq; &c. Et prædict' Richardus & Agn' po: lo: suo prædict' Matild' in Placito prædict' &c. Ad quem diem coram ipso Domino Rege venerunt partes; & quia constat per recordum prædict' quod prædict' vocati ad Warran' sunt extrinseci, & quod vocati sunt ad Warr' per auxilium Curie Domini Regis qui est superior Dominus totius Regni, & qui omnibus & singulis de Regno suo justitiam facere tenetur, & maxime in defectu aliorum per quorum defectum idem Dominus Rex vocatur in auxilium; Præceptum est Vicecom' Northumb. quod summoneat prædict' Aymerum de Rocheford & Julianam uxorem ejus filiam & unam hered. Nicolai de Swineburn, Johan. Swayne & Aviciam uxorem ejus fil. & alteram hered. prædict'. Nicholai, & Tho. Fishburn fil. Christianæ cohæredis prædictarum Julianæ & Aviciæ, quod sint coram Rege a die Sancti Hilarii in 15 dies ubicunq; &c. ad warran. &c. Idem dies datus est petentibus, & similiter prædict'. Simoni tenen' per Warrant. in Banco, &c. Idem Simon. po: lo: suo Walt. de Middleton & Will. de Burgham loquela prædict'. &c. Et quia prædict'. Episcopus non misit breve originale simul cum prædict'. recordo, & necesse est prædict'. breve hic mittat; Mandatum est prædicto Episcopo vel ejus locum tenenti, quod prædict'. breve Domino Regi mittant, ita quod illud habeant ad præfatum Terminum, &c. Ad quem diem præd. Simon' tenens per warran' venit; & præd. Matild. de Swynburn, Richardus Bouche, & Agnes uxor ejus petentes non venerunt, nec, &c. Ideo prædict'. Simon' inde sine die. Et prædict'. Matilda, Ricardus & Agn. & plegii sui de prosequend. in misericordia, &c.

Nota.

Pasch. 46 E. 3.
Coram Rege Rot.
42.

In an Information against Thomas Bishop of Durham for a contempt in not certifying a Record, he pleads that he is Comes Palatinus & Dominus Regalis cujusdam terræ vocat' the Bishoprick of Durham, & habet omnia Jura Regalia quæ ad Comitum Palatinum & Dominum Regalem pertinent, per se, Justic' & ministros suos exercenda.

In this County Palatine there is a Court of Chancery which is a mixt Court both of Law and Equity, as the Chancery at Westminster; Herein it differeth from the rest, that if an erroneous judgment be given either in the Chancery upon a judgment there according to the Common Law, or before the Justices of the Bishop, a Writ of Error shall be brought before the Bishop himself, and if he give an erroneous judgment thereupon, a Writ of Error shall be sued returnable in the Kings Bench.

But now let us see what we find in our books concerning this County Palatine.

Mich. 14 E. 3. tit.
Error 6.
F. N. B. 21. g.
2 El. Dier 250.

In a Formedon in Durham the tenant pleaded the warranty of the Ancestor of the Demandant, with assets in a forain County, whereupon the Court awarded that the tenant should go quit without day. And the Demandant upon this judgment sued a Writ of Error before the Bishop, and assigned for Error, that the Justices awarded that the tenant should go quit without day, where they ought to have continued the plea by adjournment until the Record had been removed. And for this error the Bishop reversed the judgment, and day given to the parties before his Justices where the plea was pleaded. At which

which day the tenant was effoined, and a day given over. At that day a Writ came to remove the Record in the common Bank, and a day given to the parties in the common Bank, and this proceeding of the Bishop was according to the usage there. And after by the advice of the whole Court a Venire fac' issued out of the common Bank to try the issue: joynted at Durham.

If a man in the County Palatine of Durham vouch a forainer to warranty, the demandant may counterplead that the voucher hath assets within the County Palatine for the delay. 32 E. 3. Vouch. 97. 14 H. 6. fol. 3.

In a Writ of Trespass Des biens emportes deins un certaine ville, the defendant said, that the place where the plaintiff supposed the taking away, is within the franchise of the B. of Durham, where the Kings Writ runneth not, but is a franchise Royal, Judgment de brief. Whereunto the plaintiff said, that the defendant came in by distress, and so the Court seised of the plea. Finchden giving the rule of the Court said, the Court is not in this case seised of the plea, but that should be where consuance or franchise is challenged, which lieth not in this case, but the Bishop hath franchise Royal into which the Kings Writ runneth not, and therefore for not denying of the exception the Writ abated. Note the Town wherein the transitory trespass was alledged by the plaintiff was within the County Palatine. 13 E. 3. Voucher 165. 45 E. 3. 17. Vid. 19 E. 3. trial 66. 19 E. 3. jurisd. 29. 33 E. 3. ib. 57. 45 E. 3. Vifne 50.

If the tenant vouch two, one within the County Palatine of Durham, and the other at the Common Law, summons shall be awarded to the Lord of the County Palatine, commanding him to summon the voucher to be at a certain day before the Justices here to try the warranty: in this case if the tenant recover in value, the Justices shall write to the Lord of the County Palatine to render in value, quod fuit concessum. 19 H. 6. 52.

See Dier 12 El. where he that hath jura regalia shall have forfeiture of High Treason, whereof Vide before in the Cap. of the County Palatine of Lanc.

* If the one be vouched, and the tenant prayeth that he may be summoned in the County of York, and the County Palatine of Durham, the voucher shall stand, for if he be summoned in the County of York, it sufficeth.

Dominus Rex habebit custodiam omnium terrarum eorum qui de ipso tenent in capite per servitium militare, de quibus ipsi tenentes fuer seisciti in dominico suo ut de feodo die quo obierunt de quocunque tenuerunt per hujusmodi servitium, &c. exceptis feodis Episcopi Dunelm' inter Time & Tese.

1. This exception extendeth not to the body. 2. If the Bishop did after this Statute purchase any Seigniorie between Time and Tese, it extendeth not to that. 3. That before this Statute, the King ought to have had the wardship of the lands, as appeareth in our books, contrary to Poles opinion in this case.

* The third Chap. of the said Statute of prerogativa Regis both give the King primer seisin, &c. without any saving of the Bishop of Duresme.

Sir Tho. Gray Knight was seised in fee of the Mannor of Chillingham in the County of Northumberland holden of the Queen by Knights service in Capite, and of the Mannor of Rosse in the County Palatine of Durham holden of the Bishop of Durham by Knights service in Capite, and died seised of both, his son and heir of full age. And although on the behalf of the Bishop some presidents were shewed in like case, yet the two Chief Justices Popham and Anderson prima facie did hold, that the primer seisin of and for the Mannor of Rosse belonged to the King.

The Town of Creke in the County of York holden of the Bishop of Durham, &c. shall be impleaded within the County Palatine of Durham, and in no other place: and so is the Mannor of Howden in the County of York.

The King shall have the temporalities of the Bishop of Durham, and for a Church that becometh void the King shall have a Quare Impedit.

See the Statute of 5 El. c. 23. concerning the Writs of Significavit and Excom. capiendo. 5 El. cap. 23.

It was holden by all the Justices, that if a man be surety for another to keep the peace, and after he breaketh the peace, and the surety hath lands in the County

Dier 12 El. 288. which was the case of James Pilkington Bishop of Durham.

* 13 H. 4. Vouch. 39. 36 H. 6. ib. 49. 4 Prerogativa reg. cap. 1.

16 E. 3. tit. Livery 29. Glanv. l. 7. c. 20. Bract. l. 2. fol. 85. 9 H. 3. prær. 25. 21 H. 3. ib. 26. * Prær. Regis c. 3.

Trin. 38 El. in Curia Wardorum.

22 E. 4. jurisd. pl. 61.

5 R. 2. trial. 94.

5 El. cap. 23.

21 E. 3. 49. 1 E. 4. 10. Regist. 153. F.N.B. 132.

County Palatine of Durham, the King shall command the Bishop of Durham or his Chancellor to do execution. And so it is in the other Counties Palatines. In the same manner it is of a Statute Staple, &c. Recognizances, &c.

Vide 5 E. 3. fol. 58. 17 E. 3. fol. 56. Rot. Parl. 7 E. 6. Rot. Pat. 7 E. 6. part. 8. 1 Mar. cap. 3.

C A P. XXXIX.

Of the Royal Franchise of Ely.

33 H. 8. cap. 10.
5 El. cap. 23.

In divers Statutes it is named the County Palatine of Ely. King H. 1. in the 10 year of his Reign, of the rich Monastery of Ely made a Cathedral Church, and of the Abby made a Bishoprick, and for his Diocels assigned unto him the County of Cambridge, which before was within the Diocels of Linc': In recompence whereof Robert Bluer Bishop of Lincoln, then Chancellor of England had to him and his Successors three Mannors, parcel of the possessions of the Abby, viz. Spaldwice, Bickleworth, and Bugden. And for the Chapter of this new Bishop, he instituted that there should be a Prior and Covent. But in respect of the Revenues, for that their principal Mannors were granted away, the number of Monks being 70 were brought down to 40. And King H. 1. granted to this new Bishop and his Successors Jura Regalia within the Isle of Ely. But the said Prior and Covent were in the Reign of H. 8. suppressed, and in stead thereof a Dean and Prebendaries were raised to be the Chapter of the Bishop, and a Grammar School for a Master and 24 Scholars.

This Royal jurisdiction the Bishop hath by prescription grounded upon the said grant as well in Pleas of the Crown, as in Common Pleas before his Justices.

Trin. 3 E. 1. Rot.
62. Coram Rogero
de Seryton & sociis
suis Justiciariis
de Banc. Trin.
16 E. 1. in Comuni
Banco Rot.
89. Cant.
3 H. 6. trial 2.

The liberty of the Bishop of Ely hath been anciently allowed by the Court of Common Pleas for lands in Wisbich, within the Isle whereof a Præcipe quod reddat was brought.

Again, Allocatur libertas Episcopo Eliensi pro terris infra Insulam de Ely prout alias, scilicet in rotulo Martini de Littlebury & sociis suis annis 55 & 56 H. 3. Anno 14 Regis nunc coram Thoma de Wayland & sociis suis. Item Mich. 16 Regis nunc, Rot. 27.

In trespasss the Defendant pleaded an arbitrament made at A. in the Isle of Ely, and thereupon issue was joyned, the Plaintiff shewed that Ely is a Franchise Royal, and they of the Isle shall not be empanneled out, and prayed a Venire fac' to the Sheriff of Cambridge.

Lib. int. Rast. fol.

Issue being joyned and the Writte to come out of Ely, the Entry is, Super quo prædict' (querens) dicit quod E. prædict' est infra Insulam Eliens' quodque Episcopus Eliens' talem habet libertatem in Insula prædicta, quod nullus Justiciar' nec aliquis minister Domini Regis Insulam illam ingredi debet ad aliquod officium ibi exercend', nec liberi tenentes nec residentes in eadem Insula illam ingredi debent ad aliquam Juratam extra Insulam illam faciend', & petit breve Domini Regis de Venire fac' hic 12. de vicineto de Soham, quæ est propinquior Villa in prædict' Comitatu Cantabr' extra Insulam prædict' ad jacen' prædict' Villæ de Ely ad triandum exitum prædict'. Et quia videtur Justiciariis hic quod petitio illa est rationi consonans, Ideo præcept' est Vic' Cant' quod Venire fac' hic tali die 12. de vicineto illo, per quos, &c.

46 E. 38.

Sentence was given in the Ecclesiastical Court in Cambridge, and the Defendant was summoned at Hadington in the Isle and Franchise of Ely,

as

as he might be, for where the action is intire, and not severall, whereof part is within the Franchise and part without, the Franchise shall not be allowed. As if one take a man in a place at the Common Law, and carry him into a Franchise and there imprison him, this Court shall hold plea, quia magis dignum trahit ad se minus dignum. Et sic de similibus.

In an Action of Account against one as Bayliff of Lands in H. and A. and H. is within the Franchise of the Isle of Ely, and because the Plaintiff might have charged the Defendant as Bailiff of A. and it is no reason that by joyning of them in one Writ to disherit the Bishop of his Franchise, the Writ abated.

5 E.2. consensans 68
21 E.4.35.

24 E.3. consensans
74. 20 E. 3. ibid.
85. 49 E.24.
See 23 E.3.22.
accord.

CAP. XL.

Of the County Palatine of Pembroke.

This was an ancient County Palatine within Wales, and the Earl was Comes Palatinus, and had Jura Regalia, and all things belonging to a County Palatine, but the Jurisdiction hereof was taken away by the Statute of 27 H.8.cap.26. the County Palatine then being in the Kings hands.

And for further proof that it was a County Palatine, see the Charter of E.3. to Lawrence de Hastings in these words.

Rex omnibus ad quos, &c. Salutem. Sciatis quod circumspectionis & elegantie præfagium quod ex aptis consanguinei nostri charissimi Laurentii de Hastings juventutis auspiciis concepimus, merito nos inducunt, ut ipsum in his quæ honoris sui debitam conservationem respiciunt, prout favoribus prosequamur. Cum itaque hæreditas bonæ memoriæ Audomari de Valentia Comitis Pembrochiæ (ut dicitur) jampridem sine hærede de corpore suo procreato decedentis ad sorores suas fuerit devoluta, inter ipsas & earum hæredes proportionabiliter dividenda : Quia constat nobis quod præfatus Laurentius qui dict' Audomar' in partem hæreditatis succedit est ex ipsius Audomari sorore seniori descendens, & sic peritorum assertione, quos super hoc consulimus, sibi debeat prærogativa nominis & honoris ; iustum & debitum reputamus ut idem Laurentius ex seniori sorore causam habens, assumat & habeat nomen Comitis Pembrochiæ, quod dictus Audomarus habuit dum vivebat : quod quidem (quantum in nobis est) sibi confirmamus, ratificamus, & etiam approbamus ; Volentes, & concedentes ut dictus Laurentius prærogativam & honorem Comitis Palatini in terris quas tenet de hæreditate dicti Audomari, adeo pleno, & eodem modo habeat & teneat, sicut idem Audomarus illas habuit & tenuit tempore quo decessit. In cujus, &c. Teste Rege apud montem Martini die Octob. Anno regni 13.

Rot.Parliamenti,
Hil.18 E.1.fo.6.
Totus Com' Pem-
broke fuit Com'
Palatinus, & ha-
buit Cancel. & Si-
gillum, &c.
27 H.8.cap.26.
Carta Regis E.3.
An.13. regni sui.
13 Octob. Ro.Pat.
13 E.3.m.12.

Note here that the eldest sister ought to have the honor, upon consultation with learned men.

Prærogativa & honor Comitis Palatini. Sicut Audomarus illas habuit.

CAP. XLI.

Of the Franchise of Hexam and Hexamshire.

This was sometime parcel of the possessions of the Archbishop of York, and claimed by him to be a County Palatine.

At the Parliament holden in 2 H. 5. it is resolved that Hexamshire was a Franchise where the Kings Writ went not.

And in the Statute of 33 H. 8. it is named a County Palatine.

But at the Parliament holden in Anno 14 Eliz. it was seriously examined, and in the end Four conclusions were enacted by Authority of Parliament. 1. That whiles it was in the hands of the Archbishop it was termed and named a County Palatine, where in right or proof there was none such. 2. That it is within, and parcel of the County of Northumberland. 3. That all Pleas of the Crown, and suits between party and party shall receive like trial, &c. as the rest of the Subjects of Northumberland ought to have. 4. That the Sheriff and other Officers of the County of Northumberland may execute his or their office, &c. within Hexam and Hexamshire. So as whatsoever it was before 14 Eliz. it is now no County Palatine, nor Franchise Royal.

2 H. 5. cap. 5.
9 H. 5. cap. 7.
8 E. 4. cap. 2.
33 H. 8. cap. 10.
14 E. cap. 13.

CAP. XLII.

Of the Courts of the Cinque Ports.

Domesday.
Chent.
Lib. Int. Rast. fo.

At the first the privileged Ports were but three. For at the making of the book of Domesday, which was in the 14 year of the Conqueror, there are but three named in that book, viz. Dover, Sandwich, and Rumney, and that these three in the time of Edward the Confessor were exonerated of such charges and burthens, as others did bear; After two Ports were added to them by the Conqueror, viz. Hastings and Hith.

Bract. li. 3. f. 118.

* Memorandum
quod Pharus de
Bologna venit ad
Conquestum tem-

pore Willielmi Regis, Bastardi, & in illo Conquestu perquisivit Wardam de Doveria in feodo, & habuit, & tenuit toto tempore predicti Regis Willielmi usque ad tempus Regis Henrici, avi Regis Henrici filii Regis Johannis, & dictus Rex Hen. avus dedit dicto Pharus 60. libras terrarum in eschambio pro Doveria, viz. Manerium de Wendovre pro xl. libr. terrarum, Kingshull pro x libr. terrarum, & 7 hidas in Eton pro 10 li. terrarum. In lib. de Abbathia Mill. fo. 114.

Rex Vic. Norff. & Suff. Salutem. Sciatis quod summoniri fecimus ad talem diem apud Shepwey omnia placita de Quinque Portibus sicut teneri debent, & solent coram Justiciariis apud Shepwey. Et ideo tibi precipimus quod hoc sciri facias hominibus de Jernemewe, & ballivis de Donewiz, ita quod si aliquis conqueri voluerit de aliquo qui sit de libertate vel infra libertatem Quinque Portuum, tunc sit apud Shepwey coram prefatis Justiciariis nostris querelam suam propositurus, & justitiam inde recepturus. Teste, &c.

In Dorf. Cart.
Anno 1 Re. Jo.
parte 2. m. 12.

After two more, viz. Winchelsey and Rye were added: for I find a Record Anno 1 Regis Johannis, quod Winchelsey & Rye debent esse in auxilium Villæ de Hastings ad faciendum regis servitium 20 Navium, &c.

And these have the same Franchises and Liberties that the former had; and every one of these send two Burgesses by the name of Barons of the Cinque Ports

Ports to the Parliament, as by the Records of the return of them remaining in Chancery at every Parliament doth appear. And albeit this be added, yet they hold their former name of the Cinque Ports. These Ports or Havens do lye towards France, and therefore prudent antiquity provided, that they should be vigilantly and securely kept, for performance whereof these Ports have a special Governor or Keeper, called by his office Lord Warden of the Cinque Ports, and is also Admiral, and hath the Jurisdiction of the Admiralty amongst them, and is exempt from the Admiralty of England. This Warden in former times was ever a man of great fidelity, wisdom, courage, and experience, for that he had the charge of the principal gates of the Realm. He is also Constable of the Castle of Dover, his Jurisdiction as Constable is limited by the Statute of Artic. super Cartas, Anno 28 E. 1. which you may read, and the Exposition thereof in the Second part of the Institutes.

The Franchise of the Cinque Ports hath been time out of mind partly by ancient Parliaments, partly by ancient Charters, &c. and confirmed by express name by the Statute of Magna Carta ca. 9. and were made Five by William the Conqueror.

For the better understanding of our books, it is to be known that there is a great diversity betwixt the principality of Wales, the Counties Palatines, &c. and the Cinque Ports. For Wales was originally no part of England, but County Palatines were parcel of the Realm of England, and divided in Jurisdiction, and the Cinque Ports are parcel of the County of Kent, and yet ubi breve domini regis non currit, but have not Jura regalia, and therefore regularly no Writ of Error did lie of a Judgment in Wales, otherwise it is in the Counties Palatines. A Judgment here of Lands in Wales, or in the County Palatine is void, but a Judgment given here of Lands in the Cinque Ports is good if the privilege be not pleaded, for they be part of the County, and the Franchise may be demanded in another action.

And it is to be observed that within the Cinque Ports there be others Courts, one befoze the Constable of the Castle of Dover, (whereof somewhat hath been said befoze) there be other Courts within the Ports themselves, befoze the Bailiffs and the Juratoys, and another which is called Curia Quinque Portuum apud Shepwey, whereof we shall speak hereafter.

If any of the Kings Courts do write to have a Record in the Cinque Ports, or for doing of any thing within the same, the Writ shall be directed Constabulario Castri de Dover, & Gardiano Quinque Portuum, for he is the immediate Officer to the Kings Courts for execution of the Kings Writs within the Cinque Ports. For example :

If a man plead a Record within the Cinque Ports, and the other plead Nul tiel record, there shall go a Writ to the Constable of Dover to certify the Re cord, for the course is for the Kings Courts to write to the Constable, and he shall send to the Barons, that is to the Justs and Jurats, to certify him of the Re cord which is befoze them, and he shall certify the Kings Court, and so the Con stable is the immediate Officer to the Kings Court.

Note, though Books say that the Writts shall be directed to the Constable of Dover, yet the Writ is to be directed Constabulario Castri de Dover, & Gardiano Quinque Portuum.

A man hath a Judgment in any of the Kings Courts, and the Defendant hath no Land or Goods but in the Cinque Ports, the Plaintiff shall have a Writ to the Constable of Dover to make execution. And so it is if a man will have surety of the peace against any person within the Cinque Ports, then he shall have a Writ out of the Chancery directed to the Constable of Dover, for the doing thereof.

*Et quia in quadā Carta domini regis nunc continetur, quod omnes querelæ versus ipsos Barones Quinque Portuum apud Shepwey terminari debent coram Custode Quinque Portuum, Præceptū est Stephano de Penestē nunc Custodi, quod partibus prædictis coram eo certum diem assignet & fac' Justitiæ complementum.

a 30 H. 6. 6. & 7.
Dier 23 El. 376.
Brook. Cinque
Ports. 25.
Temps H. 8. di-
versity des Courts.
b Hil. 18 E. 1. f. 6.
Rot. Par. nu. 115.
Dorf. Claus. Anno
30 E. 1. m. 13.

c *Curia Quinque
Portuum de Shep-
wey.* Nota, this for
the stile of the
Court.
See Bract. lib. 3.
Ubi supra.
d 50 E. 3. 5.
33 E. 3. c. 1. jurisd.
60.

1 E. 3. fo. 2.
49 E. 3. 24.
11 R. 2. b' re 636.
46 E. 3. 8.
33 H. 6. 4.
8 H. 3. 7.
* 39 E. 3. 17.
30 Ass. pa. 1.
8 E. 3. 27.
f 49 E. 3. 24.

a If an erroneous judgment be given in the Cinque Ports before any of the Justices or Jurats, it shall be redressed before the Constable of Dover at the Court at Shepwey, which Court was raised of ancient time by Letters Patents of E. 1.

b The Court of the Cinque Ports holden at Shepwey adjudged the Abbot of Feversham (which Abby was within the Cinque Ports) for his offence to be imprisoned, for the which the Archbishop of Canterbury caused the Kings Ministers of Dover to be cited into the Ecclesiastical Court, &c. The Record saith, Quia secundum consuetudinem regni approbatam, & ratione juris regii, ministri regis pro aliquibus quæ fecerunt ratione officii sui, trahi non debeant. Rex prohibuit Archiepiscopo Cant' ne molestari faciat ministros suos Dover, de eo quod Abbatem de Feversham pro delicto suo incarcerationem per considerationem c. Curia Quinque Portuum de Shepwey, &c. The whole Record is worthy to be read over & this shall suffice for the end that I aim at.

Vide Fleta lib. 2. cap. 48. the Hustings apud Shepweye.

The Jurisdiction of the Cinque Ports is general, and extends as well to personal actions, as to actions real and mixt, of which touch the freehold, but so it is not in ancient demesne, for regularly that Jurisdiction extends not to personal actions.

If a Præcipe be brought of Land, part within the Cinque Ports, and part without, the whole Writ shall abate: & sic de similibus. * And there is a diversity between a Franchise to demand consuls, and a Franchise, ubi breve domini regis non currit: For in the first case the Tenant or Defendant shall not plead it, but the Lord of the Franchise must demand consuls, but in the other case, the Defendant may plead it to the Writ.

c The Pannoz of P. within the Cinque Ports was holden of the King as of the honoz of Egle, and escheated to the King for want of heir, the King granteth the Pannoz of P. to another. And it is adjudged that the seisin of the King in this case doth not make it of another nature then it was afore; for the privilege runneth with the Land.

CAP. XLIII.

The Court of the Escheator, and of Commissioners for finding of Offices, &c.

THE gift of the Office of Escheator belongeth to the Office of the Lord Treasurer, who granteth the same by his Deed. He is to continue in his Office but one year: or once in three years. 14 E. 3. c. 8. 1 H. 8. c. 8. 3 H. 8. c. 2.

For the derivation of his name, his antiquity, and some part of this office, see the first part of the Institutes, Sect. 4. where the ancient Authors, and many Authorities be quoted: He ought to be seised of 40 Marks land, except Escheators in Cities and Counties Palatine.

All Writs Original of Diem clausit extremum, Mandamus, Devenerunt, Melius inquirend', Quæ plura, &c. are directed to him to find an Office for the King after the death of his Tenant, which held by Knights service in Capite, or otherwise by Knights service.

This Officer in case of Escheats for Treason, Felony, or in case of Wardship, or Primer seisin, may find an Office virtute Officii. But in case of Wardship, or Primer seisin, if he find an Office virtute Officii, if the Land, &c. be of the yearly value of 5 l. (or above) he shall lose every time he shall sit 5 pounds. 3 H. 8. cap. 2.

Offices found before him virtute Officii, he may return either into the Court of Chancery, or into the Exchequer, saving at this day for Wardships, or Primer seisin, which he must return into the Chancery: for by the Statute of 32 H. 8. Cap. 46. the Court of Exchequer is barred to deal with the same. And Offices found before him virtute Brevis, are to be returned by him into the Chancery. Lib. r. fol. 42. b. Alton woods. 4 E. 4. 24. Stanf. prer. 70. b.

If he sit by force of a Writ, he ought to take the Inquest within a moneth next after the delivery of the Writ, and he ought to return the same within a moneth after he taketh it, either by Writ, or virtute Officii. 3 H. 8. c. 2. 8 H. 6. 16. 18 H. 6. 7.

Sæ Capit' Eschaetrix, whereof the Escheator may inquire: and the Statute De Eschaetoribus, Anno 29 E. 1. Vide Dier. 248. 249. *a* He is accountable pro catallis felonum, fugitivorum, & hujusmodi. *b* All Offices found before him, or Commissioners ought to be found by the oaths of twelve men, every Juroz to have Lands, &c. to the yearly value of 40 s. in the same County, *c* and indenced, and one part by them sealed, and by him the other part, which is to remain with the Foreman of the Jury, and to be taken in good Towns, and open places. For secret Offices are abhorred in Law, full of vexation and charge, and never have good success. Mag Cart. 1. part. fol. 160. 161. 4 Keyw. 6 H. 8. 173. b 1 H. 8. cap. 8. 3 H. 8. cap. 2. 6 34 E. 3. cap. 13. 36 E. 3. cap. 13. otherwise void.

Neither he nor the Commissioners can take any Enquest of inquiry of any other persons, but such as be impanelled and returned by the Sheriff. 8 H. 6. cap. 16. 18 H. 6. cap. 7.

If he or the Commissioners shall deny any person to give evidence openly in his presence to such Enquests as shall be taken before him for the finding of an Office, he shall forfeit 40 l. If he, or the Commissioners, or any of them shall refuse to take a verdict of the Enquest offering to present the same, he shall lose 100 l. to the party grieved. 1 H. 8. cap. 8. 3 H. 8. cap. 2.

An Office found before Commissioners is as forcible in Law, as if it had been found before the Escheator. 24 E. 3. 55.

The Escheator ought to take no fee by the Statute of W. 1. but of the King only, but if he find an Office by force of any Writ, and according to the same for the King, he shall have a fee of 40 s. by the Statute of 23 H. 6. but if it be found See the 2. part of the Institutes, W. 2 c. 26. 23 H. 6. c. 17. 1 H. 3. c. 3.

found before him by Writ, or ex Officio, that the Lands are holden of a Subject, or if he find an Office for the King virtute Officii, there is no fee due to him. But the Commissioners ought to take no fee at all, though an Office be found for the King, because they are not within the Statute.

a 33 H.8. cap. 22.

b 32 H.8. cap. 46.

c 5 E. c.9. 12 E. 4.

c.9. F.N.B. 100.c.

9 H.6. fol. 60.

d 5 E. 3. c. 4.

Register 177.

e 21 E. 4. 23. F.N.

B. 100.c. 1 H.8.

ca 8. 3 H.8. cap. 2.

9 H.6. fol. 60.

f Regist. fol. 301.b.

g 10 H.7. 7. b.

The Escheator finding an Office for the King by force of any Writ, not exceeding the value of 5 l. shall not take above 15 s. and the Commissioners can take nothing: but the Master of the Ward may allow Commissioners Counsellors, and Feodaries their Costs. The Escheator may make Deputies, but such able men, for whom he will answer, and that have sufficient Lands in the same County, &c. and the Escheator shall certify the name or names of his Deputy or Deputies, under his Letters Patents into the Exchequer within twenty days after deputation made. And no Deputy shall take upon him to occupy that Office, except the Escheator hath Lands to the value of 20 l. And if any Sub-escheator be made, not having sufficient, he may be removed by the Kings Writ directed to the Escheator De Subeschactore amovendo.

If the Escheator, Sub-escheator, or Commissioner, return a false Office, an Action upon the Case doth lye against them by the party grieved, although they be Offices of Record, besides the penalty of 100 l. by the Statutes of 1 H.8. and 3 H.8. The oath of the Escheator expressing his duty, appeareth in the Register, fol. 301. b.

If I be possessed of the goods of a man outlawed in trespass, and I deliver them to the Escheator, I am discharged, quod Brian affirmavit: for he saith that the Escheator is the Kings Minister, and chargeable for the goods.

C A P. XLIV.

Courts in the Universities of Cambridge and Oxford.

It is true that each of these Universities hath divers Courts, Jurisdictions, Liberal Arts and Powers, by the Charters of the Kings of this Realm, others of which Sciences are not were not grantable by Charter, but by authority of Parliament, which being espied, Queen Elizabeth, (who could (we speak it of knowledge) not only speak the Language of French, Italian, and Spanish, but was learned in the Latine and Greek learned tongues, and excelled all others of her Sex in knowledge both Divine and Humane,) for the great love and labour that her Majesty bare to her Highness Universities, and for the great zeal and care that the Lords and Commons in Parliament had for the maintenance of god and godly literature, and the vertuous education of youth within either of the said Universities; and to the intent that the ancient Priviledges, Liberties and Franchises of either of the said Universities, granted, ratified and confirmed by the Queens Highness, and her most noble Progenitors, might be had in great estimation, and be of greater force and strength, for the better increase of learning, and the further suppressing of vice: It was enacted by Authority of Parliament holden in the 13 year of her most prosperous Reign: 1. That each of the Universities should be incorporated by a certain name (albeit they were ancient Corporations before.) 2. That all Letters Patents of the Queens Highness, or by any of her progenitors or predecessors, made to either of the said incorporated bodies severally, or to any of their predecessors of either of the said Universities, by whatsoever name or names, the Chancelor, Masters and Scholars, of either of the said Universities, in any of the said Letters Patents had been named, should be good and effectual, and available in Law, to all intents, constructions and purposes, &c. as amply, fully, and largely, * as if the said Letters Patents were recited verbatim in that Act of Parliament, any thing to the contrary notwithstanding. 3. That the Chancelor, Masters and Scholars of either of the said Universities, and their successors for ever, should severally have, hold, possess, and enjoy, and use to them and their successors for ever, all manner of Mannors, &c. and Hereditaments, and all manner of Liberties, Franchises, Immunities, Quietances, and Priviledges, view of Frankpledge, Law days, and other things whatsoever they be, which either of the said incorporated Bodies had held, occupied or enjoyed, or of right ought to have had, used, occupied and enjoyed, according to the true intent and meaning of the said Letters Patents whatsoever, any Statute, Law, Usage, Custom, or other thing or things, made or done to the contrary notwithstanding. 4. That all Letters Patents of the Queens Highness, or any of her progenitors or predecessors, and all manner of Liberties, Franchises, Immunities, Quietances, and Priviledges, Leets, Law days, * and all other things whatsoever therein expressed, given or granted to either of the said Universities, by what name so ever, be and by vertue of this Act should be established and confirmed, any Statute, Law, Usage, Custom, Construction, or other thing to the contrary notwithstanding.

By this blessed Act of Parliament, all the Courts, Franchises, Liberties, Priviledges, Immunities, &c. mentioned in any Letters Patents, &c. to either of the said Universities (which were too long here to be recited) * that they might prosper in their study with quietness, are established, made good and effectual in Law, against any Quo warranto, Scire facias, or other suits, or any quarrel, concealment or other opposition whatsoever. See the Letters Patents of King H. 8. bearing date primo Aprilis Anno 41 of his Reign, made to the University,

* Note these general brief and effectual words.

* Nota hoc. Note these general binding and effectual words.

Actus benedictus. * Haud facile emergunt quorum virtutibus obstat Res vexata domi.

of Oxford; and other Letters Patents bearing date 26 Aprilis, Anno 3 Regine Eliz. made to the University of Cambridge, both which are by express name established and confirmed by the said Act of 13 Eliz. In which Act there is a Saving to all, other then to the Queens Majesty, her heirs and successors. Et sic omnia in tuto.

Touching the Jurisdiction and Consuans of divers things belonging to the University of Cambridge, see the Parliament Roll of 5 R. 2. n. 45, &c. till n. 66.

Nota (prob dolor)
the ancient Char-
ters, Records, &c.
of the University
of Cambridge
burnt by Rebels.

The Mayor, Bailiffs, and Comminalty of Cambridge were accused, for that they in the late tumults and uprores confedered with divers other misdoers, brake up the Treasury of the University of Cambridge, and therout took, and burned sundry the Charters, &c. of the said University, and also compelled the Chancellor and Scholars of the said University, under their Common Seals to release to the said Mayor and Burgessees, all manner of Liberties, and also all Actions real and personal, and further to be bound to them in great sums of money: whereupon it was agreed in form following: That one Writ should be directed to the Mayor, Bailiffs, and Comminalty of Cambridge, that then were to appear in the Parliament, and to answer (the form thereof doth there appear.) And that another Writ in form aforesaid should be directed to the Mayor and Bailiffs that were at the time of the offence, (the form whereof doth there appear also.) The Mayor and Bailiffs that then were appeared in proper person, and pleaded not guilty, ne witting thereto; the Comminalty by their Attorneys appeared at the day. The Mayor and Bailiffs, that before were at the time of the offence, appeared also in proper person, & the said Mayor answered, That he was not privy to any such act, but only by compulsion of others, if any thing were therein done; the which the Kings learned Counsel then did disprove, as by the Record appeareth. The Burgessees of Cambridge delivered into the Parliament the said two Writs sealed by the Chancellor and Scholars, the one Writ contained a release of all Liberties and Priviledges, with a bond of 3000 l. to release all suits against the said Burgessees. The other was a Release of all Actions real and personal, as there doth appear. Upon the reading of which two Writs, they both were commanded to be cancelled for the causes aforesaid. After this the Chancellor and Scholars aforesaid by way of petition, and in form of sundry Articles exhibited, shewed the beginning and whole discourse of the said Mayor and Bailiffs effectually and largely. Upon reading of which bill, it was demanded of the said Burgessees what they could say, wherefore their liberties late by the King confirmed should not be seized into the Kings hands as forfeited.

They require 3 things, viz. 1. A copy of the bill. 2. Counsel. And 3. Respite to answer. To the copy of the bill was answered, that since they heard the same, it should suffice, for by Law they ought to have no copy. To Counsel, it was said, that wherein Counsel was to be had, they should have, wherefore they then were appointed to answer to no crime or offence, but only touching their liberties. After many dilatory shifts and subterfuges, the said Burgessees touching their liberties only, having no colour of defence, submitted themselves to the Kings mercy and grace, saving their answers to all other matters. The King thereupon by common consent of the Parliament, and by Authority of the same, seized the same liberties into his hands as forfeited. And after the King granted to the Chancellor and Scholars aforesaid, within the said Town of Cambr. and *Suburbs of the same, the Assise, consuance, & correction of Bread, Ale, Weights, Measures, Regrators, and Foreshallers, with the fines, and americiaments of the same, yielding therfore yearly at the Exchequer to l. And certain liberties the King after granted to the said Mayor and Bailiffs, and increased their former fee farm.

This University of Cambridge hath power to print within the same omnes & omnimodos libros, which the University of Oxford hath not. See a notable record in Parliament, 13 H. 4. concerning the University of Oxford, by the which it was decreed and adjudged by Authority of Parliament, that the Popes Bull should not impeach, or alter the right and custom of any thing concerning that University, and therefore was disallowed, too long to be here inserted.

Nota, by Act of
Parliament.
Vid. Rot. Par.
8 R. 2. nu. 11.
Nota, Suburbs
proveth a City.
Nota, the priority
of the grant to
the University.

Rot. Par. 13 H. 4.
nu. 15, 16, 17.

CAP. XLV.

The Court of the Stanneries in Cornwall and Devon.

The stile of the Court of Stannery is, and always hath been, Magna Curia Domini Regis Ducatus sui Cornubiæ apud Crokerenton in Com̃ Devon coram A.B. Custode Stannariæ dicti Domini Regis in dicto Com̃ Devon.

The Stile of the Court.

The Officers of this Court be the Steward, Under-warden, &c.

It is called Stannaria à Stanno, because the Lord Warden hath Jurisdiction of all the Tynne in Cornwall and Devon. Tynne is a Saxon word, and derived à tinnitu, and the Tynners are called Stannatores.

The Officers.

The Jurisdiction of this Court is guided by special Laws, by Customs, and by prescription time out of mind, which so far as we find it to be allowed by the resolution of the Judges, or by Act of Parliament, we will recite.

The Jurisdiction.
See the first part of the Institutes, Sect.

In Cancellaria apud Westm̃ coram Nicho. Bacon milite Custod̃ Magni Sigilli Angliæ pro Stannatoribus, die Veneris, viz. 14 die Novembris Anno regni Elizabethæ Reginæ Quarto. Inter Martinum Trewynarde Quer̃ in Cur̃ Stannar̃ com. Cornub', & Johannem Killegrewe & Georgium Trewynard Defend.

Where the 14 day of October last past, the matter in question touching the allowing or disallowing of Writs of Error, as well between the parties aforesaid, as also for and concerning all other Writs of Error touching all causes determinable in the Stannery Court in Cornwall, was by the order of the Lord Keeper of the Great Seal of England committed to the hearing and examination of Sir William Cordell Knight Master of the Rolls, and Sir James Dier Knight Chief Justice of the Common Pleas, and Justice Weston; to the intent upon the due consideration of the cause they should make report unto the said Lord Keeper of their opinions and proceedings therein, as in their judgments should seem most agreeable to Justice and Equity: who having accordingly travelled diligently for the understanding of the truth of the premises, upon the deliberate hearing and examining of the cause in the presence of the Council learned of both sides, and upon the perusing and consideration of the ancient prescriptions, Customs, Liberties and Charters exhibited by the said parties concerning the premises, have this day made their report unto the said Lord Keeper as followeth, That is to say: That for as much as the said Plaintiff could not, nor did not shew forth any Record or President, whereby any judgments or executions heretofore passed in any of the said Stannery Courts have been reversed by Writ of Error in any of the Queens Majesties Courts of her Bench or Common Pleas: And for that it appeareth unto them that divers and sundry inconveniences were likely to ensue by allowing of such Writs of Error, and upon other causes and considerations them especially moving: They in their opinions think it not meet nor convenient that any Writs of Error shoul pass or be suffered in such case to reverse any of the said Judgments or Executions. Upon which report made, It is this day ordered by the said Lord Keeper of the Great Seal, that the Order heretofore taken the 15 of June last past made against the Lord Warden of the Stanneries aforesaid, his Officers and others mentioned in the same, concerning the not allowing, or not executing of any Writ or Writs of Error: and all and singular the contempes contained in the same Order supposed

Mich. 4 Eliz. in Cancellar. Trewynards case.

No Writ of Error lyeth upon any judgment in the Stannery Courts. Vide Simle Dier 23 Eliz. fo. 376. But judgments shall be reversed by Appeal as in the next page appeareth.

by them to be committed, concerning the not allowing or not executing of any Writ or Writs of Error as is aforesaid, shall be clearly frustrated and void, and they and every of them clearly released and discharged, any thing in the same Order to the contrary notwithstanding. And that the said Defendants and every of them shall be at their liberty to take their advantage against the said Plaintiff for their executions had or to be had in any of the said Stannery Courts according to the custom of the same Courts without let or impeachment of any Writ or Writs of Error or of false judgment sued or to be sued in any of the said Courts of the Kings Bench or Common Pleas. And that from henceforth no Writ or Writs of Error, or false judgment be hereafter sued in any of the said Courts of the Kings Bench or Common Pleas to reverse any judgment or judgments in any of the said Courts of Stanneries heretofore given, or hereafter to be given, until upon further consideration of the ancient grants and liberties of the said Courts of Stanneries, or upon some other sufficient cause or matter, it shall be otherwise ordered and determined by this Court of the Chancery.

Mich. 7 Eliz. Regina in Camera Stellata, 29 Nov.

In Camera Stellata apud Westm coram Concilio ibidem die Mercurii, viz. 29 die Novemb. Anno regni Dñæ Eliz. Dei gratia Regina, Angliæ, Franciæ, & Hiberniæ, fidei defensor, &c. Septimo 1564.

Where a matter in variance hath been heretofore moved, and depending in this honourable Court, between Martin Trewynard Plaintiff, and John Raskarrock, William Gilbert, John Killegrew the younger, James Drewe, and other Defendants by two several Bills exhibited into this Court, whereof the last Bill containeth no other matters of effect being not mentioned in the first Bill, other than the taking of certain cattel of the said complainant and others. And where also it appeareth this present day, that the taking of the said cattel was by certain of the said Defendants lawfully authorized for that purpose by the Steward of the Stannery Court of Penwith, and carried into the County of Cornwall for an execution upon a condemnation by judgment had in the said Court against the said Plaintiff. Touching which condemnation the said complainant hath complained as well in the Court of Chancery by Bill, and in the Kings Bench by Writ of Error, as also in this Court, as appeareth in the first of the said two Bills here depending, meaning by some of these ways to call in question the validity of the said judgment, and was out of the said several Courts by order discharged and dismissed, referring the proceeding upon the said judgment to the order of the said Stannery Court, according to divers Ordinances by divers ancient Charters, Customs, and Liberties belonging to the Stannery ratified by Act of Parliament. And where it doth also appear that the taking of the said Cattel, whereupon the said last Bill in this Court is exhibited was only for the execution of the said recovery. And where also it doth further appear, that by the Laws and Ordinances of the said Stannery (if any such cause of complaint be ministered) the same is to be redressed by appellation in several degrees, viz. first to the Steward of the Stannery Court where the matter lyeth, then to the Underwarden of the Stanneries, and from him to the Lord Warden of the same Stanneries: and for default of Justice at his hands, to the Princes Privy Council, and not examinable either here in this Court or in any other Court. It is therefore this present day ordered, that the said several Bills of complaints, and the said Defendants named in the same, with all the causes therein mentioned, be forthwith dismissed out of this Court to be determined according to the said Laws and Ordinances in the said Stannery, and not elsewhere.

Erroneous judgments in the Stannery are to be reversed by appellation, and to whom this appellation shall be made.

The resolution of all the Judges (by force of his Majesties Letters) concerning the Stanneries in *Devonshire* and *Cornwall* upon the hearing of the Council learned of both parties at several days, and what could be alledged and showed on either party, and upon view and hearing of the former proceedings in the Courts of the Stanneries both before and since a certain Act of Parliament made concerning the Stanneries in * 50 E.3.

Term. Mich.
4 Jac. Regis.

* See this Act of
Parliament here-
after in this Chap.

First, we are of opinion, that as well Blowers as all other labourers and workers (without fraud or covin) in or about the Stanneries in *Cornwall* and *Devon*, are to have the privilege of the Stanneries during the time that they do work there.

Secondly, that all matters and things concerning the Stanneries, or depending upon the same, are to be heard and determined in those Courts according to the custom of the same time out of mind of man used.

Thirdly, that all transitory actions between Tynner and Tynner, or Worker and Worker (though the cause be Collateral, and not pertaining to the Stannery) may be heard and determined within the Courts of the Stanneries according to the custom of the said Courts, albeit the cause of Action did rise in any place out of the Stanneries, if the Defendant be found within the Stannery; or may be sued at the Common Law at the election of the Plaintiff. But if the one party only be a Tynner or Worker, and the cause of Action being transitory and collateral to the Stannery do rise out of the said Stanneries, then the Defendant may by the custom and usage of those Courts plead to the jurisdiction of the Court, that the cause of action did rise out of the Stanneries, and the jurisdiction of those Courts, which by the custom of the Court he ought to plead in proper person upon oath. And if such plea to the jurisdiction be not allowed, then a Prohibition in that case is to be granted. And if in that case the Defendant do come to plead to the jurisdiction of the Court upon his oath, he ought not to be arrested *cundo*, *redeundo*, *vel morando*, at the suit of any subject in any Corporation, or other place where the said Courts of the Stannery shall be then holden.

Fourthly, if the Defendant may plead to the jurisdiction of the Court in the case before mentioned, and will not, but plead and admit the jurisdiction of the Court and judgment is given, and the body of the Defendant taken in execution, the party cannot by Law have any action of false imprisonment, but the execution is good by the custom of that Court. But if in that case it doth appear by the Plaintiffs own shewing, that the contract or cause of action was made or did rise out of the Stanneries, and the jurisdiction of those Courts, or if it appear by the condition of the bond whereupon the action is grounded, that the condition was to be performed in any place out of the jurisdiction of those Courts, then all the proceedings in such cases upon such matter apparent, are *coram non Judice*.

Fifthly, we are of opinion, that no man ought to demur in that Court for want of form, but only for substance of matter. As if an Action be brought there for words which will bear no action, or an action of debt upon a contract against Executors or Administrators, or such like; In such cases a demurrer may be upon the matter. And that the proceedings there must be according to the custom of those Courts used time out of mind of man: for that no Writ of Error doth lye upon any judgment given there, but the remedy given to the party grieved is by appeal, as hath been time out of mind of man accustomed.

Sixthly, that the Courts of the Stannery have not any jurisdiction for any cause of action that is local, rising out of the Stanneries.

Seventhly, that the privilege of the workers in the Stanneries do not extend to any cause of action that is local rising out of the Stanneries (for matters of life, member, and plea of Land are by express words excepted in their Charters) and no man can be exempt from Justice.

Vide lib. Intr. Coke fo. 467. tit. Prohibition, & fo. 23. 293. b. in Error. Vide Fleta lib. 6. cap. 7. § *Servitia vero*.

Such Charters, Records, and Acts of Parliament as we have observed concerning the Stannery, we will according as we have done throughout this Treatise recite in serie temporis.

In Registro Episcopi Exon.

* This was Simon de Apulia, first Dean of York, & consecrate Bishop. 8 Johan. 10 E. 2. Inquis. 2. nu. 29.

Rot. Par. 1 H. 3. m. 4.

* She was the daughter of Aymer Earl of Angouleme.

2 Rot. fin. 4 H. 3.

b Rot. Par. 10 H. 3. m. 9.

c Rot. Par. 33 E. 1. The liberties and privileges of the Tanners.

d Pl. Com. 327, 328 e 35 E. 1. in the Treasury.

f Rot. Par. 4 E. 2.

g 12 E. 3. part 1. nu. 17.

Rot. Par. 21 E. 3.

Vide Rot. Par.

26 Apr. Anno

7 E. 6. Gilbert

Brockhouse.

h Rot. Par. 50 E. 3.

holden the Monday after the Feast of S. Gregory

Johannes Dei gratia Rex Angliæ, &c. Sciatis quod intuitu Dei, & pro salute animæ nostræ dedimus & concessimus, ac presenti carta nostra confirmavimus Deo, & Ecclesiæ beati Petri Exon, & venerabili patri * Simoni Exon Episcopo & successoribus suis Exon. Episcopis Decimam de antiqua firma Stanni in Corn Devon & Cornub. Habendum sibi & successoribus suis cum omnibus libertatibus & liberis consuetudinibus ad eam pertinentibus per manus illius vel illorum qui Stannariam habuerint in custodia, &c.

Rex Roberto de Courtney Salutem. Mandamus vobis quod sine dilatione & difficultate aliqua habere faciatis * Isabellæ Reginæ matri nostræ Stannariam Corn Devon cum Cuneo & omnibus pertinent. Teste Corn Mareschallo, &c.

a Rex concessit Johanni filio Rici Stannariam in Cornubia, reddendo mille marcas. Simile Anno 5 H. 3. Rot. finium.

b Rex &c. Sciatis quod commisimus Ricô dilecto fratri nostro Stannariam nostram Cornubiæ cum omnibus pertiñ, &c.

c There be two several Charters of liberties and privileges both bearing date 10 Aprilis Anno 33 E. 1. the one made ad emendationem Stannariorum nostrarum in Corn Devon, and the other ad emendationem Stannariorum nostrarum in Corn Cornubiæ, d which you may read at large in Pl. Com. e These Charters were allowed in Anno 35 E. 1.

f The Charter of 33 E. 1. was confirmed to the Tynners of Devon, de verbo in verbum, and the like in 1 E. 3. and 17 E. 3.

g Vide Rot. Almaniz, Anno 12 E. 3. part. 1. nu. 17. An Ordinance of the King by advice of his counsel concerning Tynne.

A Lease made to Tideman de Linberghe de Cunagio Stannariæ & de emptione totius Stanni in Corn Devon & Cornub. pro fine mille marcarum & 3500. marcarum redditus. These were things done de facto, but let us turn our selves to that, which hath the force of a Law, viz. h An excellent declaration, limitation and Exposition of the said Charters of 33 E. 1. that was made in the Parliament holden in An. 50 E. 3. by authority of the same, but never printed, (which we have set down in hæc verba, to the end that no syllable of the same should be omitted) it is enacted as followeth.

A tres excellent & tres redout Seign' le Roy, supplie sa poure Commune del County de Devonshire que luy plese per l'avy des Prelats, Countees, Barons, & autres sages in cest present Parliament ordeiner remedie de ceo que les Esteynors, & les Ministres del Esteynery del dit County ont long temps a la dit Commune sibi en as seigneurs come as autres fait, & sont de jour in autre diverses extortions, oppressions & grievances per colour de les Franchises a eux grantes per les Chartres nostre seigneur le Roy, & de ses progenitors encontre la ley & le purport des ditz Chartres, & per leur malveis interpretation dicelles: & que les ditz Chartres & les Franchises comprises en ycelles puissent leuz & declarez d'article en article si que la Commune du dit County puissent, estre apries droiturelment d'ycelles, & que cest declaration soit mys en record. Et si nul article y soit en les ditz Chartres que touche customes ou usages, que plese a nostre dit seigneur le Roy d'ordeiner & mander en brief temps suffisants Justices seigniors & autres apries de la ley a celles parties denquiere desdites customes & usages, & quils eyent poyur de oyer & terminer tous les conspiracies, confederations, alliances, champerties, extortions, oppressions, grievances, faucones & maintenances qu'eux les ditz Esteynors & leur Ministres ont fait a la dite Commune, ou a nul de eux qui plendre se vorra, & ce auxi bien al suit le Roy, come de la party entendants que le Roy nostre seig-

nior ent gaignera molt, & d'autre parte se remede ne lour y soit ore fait ilz
ferront en brieve temps pur la greinder party disherites & destruitz a tontz
jours, que Dieu ne voilla. Le tenour d'ascuns des articles de les dites Char-
tres que lour besoignent de declaration sensuent cy apres premerement,
Cestassavoir.

Sciatis nos ad emendationem Stannar' nostr' in Com' Devon' ad tran-
quillitatem & utilitatem Stannatorum nostrorum prædictorum earun-
dem concessisse pro nobis & hæredibus nostris, quod omnes Stannato-
res præd. operantes in Stannariis illis quæ sunt dominica nostra, dum
operantur in eisdem Stannariis liberi sint & quieti de Placitis Natio-
rum, & de omnibus Placitis & querelis Curiam nostram & hæredum
nostrorum qualitercunque tangentibus, Ita quod non respondeant co-
ram aliquibus Justiciariis vel Ministris nostris seu hæredum nostrorum
de aliquo Placito seu querela infra prædict' Stannarias emergentibus,
nisi coram Custode nostro Stannariarum nostrarum prædictarum qui
pro tempore fuerit, (exceptis placitis terræ, vitæ, & membrorum) nec
non recedant ab operationibus suis per summonitionem alicujus mini-
strorum nostrorum seu hæredum nostrorum, nisi per summonitionem
dicti custodis nostri. Et quod quieti sint de omnibus tallagiis, theolo-
niis, stallagiis, auxiliis & aliis custumis quibuscunque in Villis, Portu-
bus, Feriis & Mercatis infra Com' prædictum de bonis suis propriis, &c.

*Sur quoy plese declarer si antres persones que les Estainors overants in les
Estayneris averont & emoyeron la Franchise grante per la dite Chartre
du Roy descome la dite Chartere voet, quod omnes Stannatores prædicti
operantes in Stannariis illis sint liberi, &c. Et antres persones que les
overours, cestassavoir leurs maîtres que les lovent & loure servants & au-
tres claymont mesme la Franchise. Et anxint plese declarer si les ditz ove-
rors y averont les Franchises en autre temps que quant ilz averont in mes-
me l'Esteynery, descome la Chartre voet dum operantur in eisdem Stan-
nariis liberi sint, &c.*

*Endroit de les. dits paroles. Operantes in Stannariis illis, & dum ope-
rantur in eisdem Stannariis, soient clerement entendus, de operariis labo-
rantibus duntaxat in Stannariis illis sine fraude & dolo, & non de aliis,
nec alibi laborantibus.*

*Item soit declare si mesmes les overours averont mesme les Franchises
tant come ils averont aillors que in les desmesnes que firent au Roy laiel
nostre seignior le Roy que ore est. La quel Roy Ayell leur grantast la dite
Chartre au temps del dit grant des Franchises descome la Chartre voet,
quod omnes Stannatores prædicti operantes in Stannariis illis quæ sunt
dominica nostra, dum operantur eisdem Stannariis sint liberi, &c. Et
ilz claymont d'avoir sont soit il einsi quils overont aillors qu'en les dites
desmesnes le Roy layel.*

*Endroit de cest article pur ce que il y a antre article en mesme le
Chartre, que lour donne conge & licence de fover, In terris, moris, & va-
stis ipsius Domini Regis & aliorum quorumcunque in Com' prædicto,
& aquas, & cursus aquarum ad operationes Stannariarum prædictarum
divertere ubi & quotiens opus fuerit, & emere buscum ad funduram
Stanni, sicut antiquitus fieri consuevit, sine impedimento Domini Re-
gis, hæredum suorum, Episcoporum, Abbatum, Comitum, Baronum,
seu*

seu aliorum quorumcunque, &c. Il semble un besoignable chose en ce case que lour custumes & usages soient diligemment enquiz, & que le Gardeine de Lesteynerie soit charge que il ne soeffre nul overour del dit Esteynerie fover en prees, ne autry boys, neve abate autry boys ou autry meafons, ne bestover eave ou cours de eave per malice. Et si per case le dit gardein se y vorra excuser que les dits Esteynors ny voillent obeire a ses maundements, ne cesser lour malice pur luy que tant tost il se face monstrier al grand conseil le Roy, & due & hastive remedy ent serra ordeignes.

Item soit declares in special comen les Justices que ore serront assignes d'aller celles Marches pur ent faire la dite enquerre prendont lissue du pais si ascun y chiete entre parties, & coment ceste article precedont touchant les custumes & usages estoit uses devant la fesaunce de la dit Chartre l'ael, & per queux gents tielle lissue serra tries, cestascavoir le quel per foreins seulement, ou per Estaynors seulment, ou per ambideux, &c.

Endroit de cest article, en soit la vys pris du grant conseil & y soient les records en Eyre si nulles y soient, & autres evidences & remembrances deins le treasury le Roy & aillours, & auxint les remembrances des seigniors queux y ont estre pur le temps serches & duement examinees, & auxint soient les liures & evidences quelles les dits Estaynors ont ont envers eux venes & regardes, issint que le y purra le mieltz venir al droit verity.

Item soit declare si le Gardein del Estaynery puisse tenir plee entre Esteynor & forein de querele sourdant aillours que in les lieux ou ilz sont overants descome la Chartre voet, quod custos noster prædictus vel ejus locum tenens teneat omnia placita inter Stannatores prædictos emergent & etiam inter ipsos & alios forinsecos de omnibus transgressionibus, querelis & contractibus factis in locis in quibus operantur infra Stannarias prædictas similiter emergent, &c. Quar' il tient plee de tiens que-reles sourdants chascune parte deins la dit counte.

Endroit de cest article. Se ont extende la jurisdiction clerement selon les paroles del dit Chartre, cestascavoir, In locis ubi iidem operarii operantur, & nemi aillours, ne en autre manuer.

Item plese declares de ceo que la dite Chartre voet ainsi. Et si qui Stannatorum prædictorum in aliquo deliquerint per quod incarcerari debent per custodem prædictum arrestentur, & in prisona nostra de Leidfard & non alibi detineantur, quousq; secundum legem & consuetudinem Regni nostri deliberentur. Et en cest case que Esteynor soit prise pur felony & liverex au Gardein, il est suffert sovent aller a large de quoy grand perill avient moult de fois & aussi de ceo que la deliverance del dit Gaole nest passe fait une foitz en dis ans. Et que pris est per colour de mesme ceste article le dit Gardein prent hors d'autre prison les emprisonnes pur arrerages sur accompts, & les mette a Lydesford ou ilz sont in tant favores quilz my font force de jaymays fair gree alour seigniors.

Endroit de ceste article en soit enquiz diligemment devant les Justices que ore y serront proschement assignes denquerre per quelle authority ilz y fait ainsi de puis que en mesme la Charte sont exceptes per special toutz ples de terre & de vie, & de membre, & celle enqueste retourne soit declare en especial fil busoigne.

And according to this Act a Commission issued out in these words.

lectis & fidelibus suis * Guidoni de Brian & Johan' de Montague, Rob' de Belknap, Hugoni de Segrave, Hen' Perchaie, & Walt' de Clopton, Salutem. Cum Dom. Edwardus quondam Rex Angliæ Avus noster per Cartam suam quam confirmavimus ad emendationem Stannariarum suarum in Com' Devon' ad tranquillitatem, & utilitatem Stannatorum suorum earundem concefferit pro se & heredibus suis, quod omnes Stannatores prædicti operantes in Stannariis illis quæ fuerunt dominica sua, dum operentur in eisdem Stannariis essent liberi & quieti de omnibus Placitis Nativorum, & de omnibus Placitis & querelis curiam suam & heredum suorum qualitercunq; tangentibus; Ita quod non responderent coram aliquibus Justiciariis vel ministris ipsius Avi nostri vel heredum suorum de aliquo Placito vel querela infra prædictas Stannarias emergent' nisi coram custode Stannariarum prædictarum qui pro tempore fuerit: (exceptis Placitis terre, vite, & membror',) nec recederent ab operationibus suis per summonitionem aliquorum ministrorum dicti Avi nostri seu heredum suorum nisi per summonitionem communem dicti Custodis, & quod quieti essent de omnibus tallagiis, theloniis, auxiliis, stallagiis, & aliis custumis quibuscunq; in Villis, Portubus, Feriis & Mercatis infra Com' prædict' de bonis suis propriis. Concesserit etiam eisdem Stannatoribus quod fodere possunt Stannum & turbas ad stannum fundendum ubique in terris, moris & vastis suis & aliorum quorumcunq; in Com' prædicto, & aquas, & cursus aquarum ad operationes Stannariarum prædictar' divertere, ubi & quoties opus fuerit, & emere buscam ad fundituram Stanni sicut antiquitus fieri consuevit, sine impedimento ipsius Avi nostri vel heredum suorum, Episcoporum, Abbatum, Priorum, Comitum, Baronum, seu aliorum quorumcunque. Et quod custos prædictus vel ejus locum tenens teneat omnia Placita inter Stannatores prædictos emergentia, & etiam inter ipsos & alios forinsecos de omnibus transgressionibus, querelis & contractibus factis in locis in quibus operentur infra Stannarias prædict' similiter emergent', & quod idem custos haberet plenam potestatem ad Stannatores prædict' & alios forinsecos in hujusmodi Placitis justiciandi & partibus Justiciam faciend' prout justum, & prius in Stannariis illis fuisset usitatum. Et si qui Stannatorum prædict' in aliquo delinquant per quod incarcerari deberent, per custodem prædict' arrestarentur, & in prisona de Lydeford, & non alibi custodirentur, & deliberarentur, quousq; secundum legem & consuetudinem Regni Angliæ deliberarentur. Et si aliqui Stannatorum prædict' super aliquo facto infra Com' prædict' non tangente Stannarias prædict' se posuerint in Inquisitionem patriæ, una medietas Juratorum Inquisitionis hujusmodi esset de Stannatoribus prædictis, & alia medietas de forinsecis. Et de facto totaliter tangente Stannarias prædict' fierent inquisitiones sicut fieri consueverint, sicut per inspectionem rotulorum Cancellariæ nostræ nobis constat. Ac etiam ex clamorosa insinuatione tam Magnatum quam Communitat' Com' prædict' in presenti Parlamento nostro graviter conquerentium ad nostrum pervenerit auditum, quod Stannatores prædicti ac officarii, balivi & ministri dict' Stannariæ Cartam prædictam pro libito suæ voluntatis interpretantes, & debitum intellectum ejusdem Cartæ pervertentes, & etiam excedentes, ac quidam alii in magno numero asserentes se fore Stannatores cum non fuerint, habitis inter eos conspirationibus, confederationibus, & alligantiis, quamplurima extorsiones, oppressiones, falsitates, deceptiones, Cambipartias, ambidextras,

* These two former were Barons and Lords of Parliament, and sat in the last Parliament of 50 E.3.

Pleas of land, life and member are excepted.

bidextras, manutenentias, transgressiones, damna, gravamina & excessus diversis subditis nostris dicti Com' colore Cartæ supradictæ per plures vices fecerunt, & indies facere non desistant in nostri contemptum & ipsorum conquerentium grave præjudicium, dicti Com' verisimilem destructionem & eversionem manifestam. Nos affectantes singulos subditos nostros sub quieto & debito regimine gubernare, & nolentes tanta maleficia, si per prædicti Stannatores, Officiarios, Ballivos vel Ministros, aut alios quoscunque perpetrata existunt, aliquantulum transire impunita; Assignavimus vos, quinque, quatuor, tres & duos vestrum, (quorum vos præfat' Robert' unum esse volumus) Justiciarios nostros ad inquirendum per sacramentum proborum & legalium hominum de Com' prædicti tam infra libertates quam extra, per quos rei veritas melius scire poterit, & aliis viis & modis quibus melius fore videritis de quibuscunque conspirationibus, confederationibus, alligantiis, extortionibus, oppressionibus, falsitatibus, deceptionibus, cambipartitiis, ambidextris, manutenentiis, transgressionibus, damnis, gravaminibus & excessibus per quoscunque Stannatores vel alios in Com' prædicti factis, & per quos vel per quem, quibus personis, ubi & quibus temporibus, qualiter & quomodo, & de aliis articulis & circumstantiis præmissa qualitercunque tangentibus plenius veritatem; & ad præmissa omnia & singula tam ad sectam nostram quam dictorum conquerentium & eorum singulorum & aliorum quorumcunque pro nobis, aut pro seipsis prosequi volentium, audiend' & terminand' secundum legem & consuetudinem Regni nostri Angliæ: Salvis semper dictis Stannatoribus libertatibus & privilegiis eis per Cartam prædictam concessis. Et ideo vobis mandamus quod ad certos diem & loca quos, vos, quinque, quatuor, tres vel duo vestrum (quorum vos, præfat' Robert' unum esse volumus) ad hoc provideritis diligenter super præmissa faciatis inquisitiones; & conspirationes, confederationes, alligantias, extortiones, oppressiones, falsitates, deceptiones, cambipartias, ambidextras, manutenentias, transgressiones, damna, gravamina, & excessus prædicta audiat & terminetis in forma prædicta, facturi inde quod ad justiciam pertinet, secundum legem & consuetudinem Regni nostri Angliæ. Salvis nobis amerciamentis & aliis ad nos inde spectantibus. Mandavimus enim Vic' Com' prædicti quod ad certos diem & loca quos vos, quinque, quatuor, tres vel duo vestrum (quorum vos præfat' Robert' unum esse volumus) ei Scire fac', Venire fac' coram vobis quinque, quatuor, tres vel duobus vestrum tot & tales probos & legales homines de baliva sua tam infra libertates quam extra, per quos rei veritas melius sciri poterit & inquire. In cujus rei testimonium has literas nostras fieri fecimus patentes. Teste me ipso apud Westm' Sexto die Julii, Anno Regni nostri Angliæ 50. Regni vero nostri Franciæ 37. Per consilium in Parlamento.

But what was done upon this Commission we have not yet found.

Rot. Pat. 8 R.2.

The said Charter of 33 E. 1. to the Tynners of Cornwall was confirmed.

Rot. Pat. Anno

1 E. 4.

Rot. Pat. 3 H.7.

And the Charter of 33 E.1. to the Tynners of Devon' was also confirmed. The like confirmation to the Tynners of Devon'.

See the Statute of 11 H.7. cap.4. concerning Tunnage and Weights.

Mich. 4 Jac. In Camera Stellata.

It was resolved by the whole Court that Stannum, Tyn, otherwise white-lead, nor black lead, nor any other base metal did belong to the King by his Prerogative, as gold and silver do, albeit there may be tried out of the base metal

metal Gold or Silver, but that is as the seed or strength of the base metal, which being extracted becomes defective.

There be five kinds of base metals, viz. *Æs*, five Cuprum (because it was found out, as some hold, in Cypro) Copper, Stannum Tynne, Ferrum Iron, Plumbum Lead, & Orichalcum Latin. Polybius 209 years before Christ wrote that this Island was abundantly storied with Tyn. Britanni qui juxta * Belerium promontorium incolunt mercatorum usu, qui eo Stanni gratia navigant, humaniores reliquis erga hospites habentur, hii ex terra saxosa cujus venas sectati effodiunt Stannum igne eductum in quandam Insulam ferunt Britannicam juxta, quam vectam vocant: Ex hiis Insulis mercatores emptum stannum in Galliam portant, inde diebus fere triginta cum equis ad fontem Eridani fluminis perducunt.

See M. Camden, pa. 134. in Cornwall.

And for as much as Tynne is a Staple commodity, let us in the next place treat of the Court of the Mayor of the Staple.

Polybius lib. 3.
Plinius lib. ca. 8. 9.
Diodorus Siculus
lib. 5. ca. 8. fo. 142.
floruit sub Augusto.
* Aut Vellam, i. e. the Cape of Cornwall.

CAP. XLVI.

The Court of the Mayor of the Staple.

This Court is guided by the Law Merchant, which is the Law of the Staple, and is holden at the Wool-staple at Westm. And there are also two Constables, a and a certain number of Correctors to do that which pertaineth to their Office, as in other Staples is accustomed.

This Court (though it was far more ancient) is strengthened and warranted by Act of Parliament, which can best express the jurisdiction thereof, and followeth in these words.

Item, because the Staples cannot long continue, nor the Ordinances thereof made and to be made be kept, if good Executors and Justices be not established to make thereof good and ready execution: We have ordained and established, that in every Town where the Staple is ordained, a Mayor, good, lawful, and sufficient shall be made and established, having knowledge of the Law Merchant, to govern the Staple, and to do right to every man after the Law aforesaid, without favour, sparing, or grief doing to any. And in every place where the Staple is, shall be two convenable Constables now at his beginning put by us; to do that pertaineth to their office, as in other Staples is accustomed; and when they shall be dead or changed, then other shall be chosen by the Comminality of the Merchants of the said places. And that no Mayor hold the Office over the year, unless he be newly chosen by the Comminality of the Merchants, as well of Strangers, as of Denizens. And that the said Mayor and Constables have power to keep the peace, and to arrest offenders in the staples for debt, trespass, or other contract, and them to put in prison, and punish after the Law of the Staple. And a prison shall be ordained for the safe keeping of them that so shall be imprisoned. And the Mayors, Sheriffs, and Bailiffs of the Towns, where the Staple is, or joyning to the Staple, shall be attending to the Mayor and Ministers of the Staple to do execution of their commandments upon pain of grievous forfeiture: and one Lord or other of the most sufficient in the Country where the Staple is, shall be assigned to

a 27 E. 3. cap. 22.
See the first part
of the Institutes.
Sect. 3. verb. in
la Ley. m.
27 E. 3. cap. 19.

27 E. 3. Stat. 2. c. 21

¶ The Jurisdiction.

The Law Merchant.

be aid to the Mayor and Ministers of the Staple to justifie the Rebels, which by the said Mayor and Ministers cannot be justified, and to maintain and counsel them when need shall be to the good governance of the Staple, and to redress at every mans complaint that that shall be done amiss by the said Mayor or Ministers, or other, and to do right to the complainants in this behalf. And that the same Mayor and Constables do not, nor ordain any thing contrary to this Ordinance, nor make interpretation nor exception to them otherwise then the words do purport, but if there be any thing that is doubted, it shall be shewed to our Councel, and there declared by good advice.

a 36 E. 3. cap. 7.
Rot. Par. 6 H. 6.
nu. 29.

b 28 E. 3. ca. 15.
*The bounds of the
Staple.*

c 27 E. 3. ca. 8.
28 E. 3. ca. 13.
Rot. Cart.
31 E. 1. nu. 44.
d 27 E. 3. cap. 9.
F N. B. 131. d.
Pl. Com. 62. b.
15 H. 7. 16.
Fleta lib. 2. ca. 57.
See 5 H. 4. ca. 12.
e 23 H. 8. cap. 6.

f 27 E. 3. cap. 23.

g 8 H. 6. cap. 17.

h 27 E. 3. cap. 8.
Dier 4. Mar. 144.
i Vid. Cart. Mercator. ubi sup.
Merchants, as well
Strangers as Sub-
jects, and Mer-
chandises.
k Able to furnish
the King with
money.
Rot. Parl. 7 E. 4.
nu. 9.
12 E. 4. nu. 59.
Rot. Parl. 9 R. 2.
nu. 4.
l Original de Scac.
7 E. 3. Rot. 9.

a *See the Statute of 36 E. 3. cap. 7. That Merchant Strangers may either sue before the Mayor of the Staple according to the Law Merchant, or at the Common Law.*

b *The bounds of the Staple at Westm. begin at Temple Bar, and extend to Tuthill. In other Cities and Towns, within the walls: where no walls be, the bounds of the Staple shall extend through all the City or Town.*

c *See 27 E. 3. how trial shall be had per medietatem linguæ: & vide 11 E. 1: Cart Mercator.*

d *See the Statute of 27 E. 3. that the Mayor of the Staple may take Recognisances of debt under the Seal of the Office, but not with the seal of the party, and how execution shall be done thereupon.*

e *The Mayor of the Staple at Westm. and the Recorder of the City of London, in the absence of the two Chief Justices, out of Term have power to take Recognisances of debts according to the form of the Statute of 23 H. 8. And this is in nature of a Statute Staple, but it hath besides the seal of those that take it, the seal of the party.*

f *The Mayor and the Constables shall be sworn in the Chancery to do lawe fully that which pertain unto them.*

g *There are five Staple merchandises of England, viz. Wool, Woollens, Leather, Lead, and Tynne.*

This word Staple, anciently written b Estaple, cometh of the French word Estape, which signifieth a Part or Market. So as the Court of the Staple is, as much to say, as the Court in the Staple Market, and is incident to that Market, and it was oftentimes kept at Callice, and sometimes in Bridges in Flanders, and at Antwerp, Middleburgh, &c. (and therefore it was necessary that this Court should be governed by Law Merchant) and at several times in many places within England, and now (as hath been said) is kept at Westm.

The use for this word Staple, Scapula, as Major Stapula, Statutum Stapula &c. And we may truly say that we have not umbratilem Stapulam, which in times past was so renowned and beneficial (as it enriched every place where it was holden, and it was commonly said, that riches followed the Staple).

See the Statute of 2 E. 3. cap. 9. and a Writ thereupon. 7 E. 3. in Scaccario. l Et Original de Scaccario Anno 12 E. 3. Rot. 2. ibid. 13 E. 3. Rot. 12. & Rot. Pat. 15 E. 3. 2 part. See the Statute of the Staple Anno 27 E. 3. through all the Chapters, 36 E. 3. cap. 7. 28 E. 3. cap. 13, 14. 43 E. 3. ca. 1. 12 R. 2. cap. 16.

C A P. XLVII.

Of the legal Courts and their Jurisdictions within the
Principality of Wales.

This Principality consisteth of 12 Counties, whereof 8. viz. Angles, Carnarvan, Merioneth, Flint, Carmarthen, and Cardigan were erected by the Act intituled Statutum Wallie Anno 12 E. 1. b and the rest by the Statute of 27 H. 8.

Wallia, Wales, so called by the Saxons *Brytwealas*, unde Wallenses, e Walli, exteri seu peregrini: and the Britons call Englishmen to this day *Saßons*: these are of the posterity of the ancient Britains inhabiting on the West part of great Britany. This was sometime d a Realm or Kingdom, and governed per suos regulos. e Rex E. dedit Regi Griffino totam terram quæ jacebat trans aquam quæ vocatur f Sed postquam ipse Griffin forisfecit ei, abstulit ab eo hanc terram, & reddidit Episcopo Celtria & omnibus suis hominibus, qui ante ipsam tenebant.

g By force of a Commission directed to divers discret and learned men as well English as Welch, viz. Griffith ap Lluellin, Gitten Owen, John King and others, it was found that Owen ap Meredith ap Theodore which married Katherine daughter of France and Dowager of King H. 5. was lineally descended from b Cadwallader King of the Britains, and gave the Arms of the Princes of Wales.

And here we are justly occasioned to discover the error of those that have given to our late Sovereign Lady Queen Elizabeth, of ever glorious and blessed memory, the surname of Tydur, and consequently to her Grandfather, Father, Brother, and Sister: which whether it were out of ignorance or malice some do question, because if she had any surname at all it was Theodore and not Tydur, which is a nick or by-name. But we rather take it to grow out of ignorance, for that in truth she had no surname at all: for this Owen her Ancestor had no surname: and therefore was called Owen ap Meredith, that is, the son of Meredith ap Theodore, (the son of Theodore) ap Grono, &c. All which were Christian names: so as they should rather have called her Elizabeth Owen, his own name, or Elizabeth Meredith, his fathers name, then Theodore his Grandfathers Christian name: but Almighty God would not suffer her to have a surname, because by his grace and goodness she should deserve for her Imperial virtues to be called Elizabeth the Great.

k But jure feodali the Kingdom of Wales was holden of the Crown of England, and thereby as Bracton saith, was sub potestate regis. And so it continued until the 11 year of the Reign of King E. 1. when he subdued the Prince of Wales rising against him, and executed him for Treason, whereof Fleta who lived in those days speaketh thus. Et unico malefactori plura poterunt infligi tormenta, sicut contigit de Davide Principe Wallie cum per Edwardum quinque judiciis mortalibus torquebatur suis namq; meritis exigentibus, detractus, suspensus, dismembratus fuit & combustus, cujus caput principali Civitati, quatuorq; quarteria ad quatuor partes regni in odium tradit deferabantur suspendend.

m The next year, viz. in the 12 year of King E. 1. by authority of Parliament it is declared thus, speaking in the person of the King (as ancient Statutes were

See W. 1. cap. 17. the second part of the Institutes, pa. 195. Stat. Wallie Anno 12 E. 1. in vet. Mag. Car. 1. part 2. fo. 3. b 27 H. 8. cap. 26. 34 H. 8. c. 26. c Lan. b. Verb. Wallus.

15 E. 3. Record 38. & tit. Error. 2 H. 5. cap. 6. 19 H. 6. fo. 12. d Realm from the French word Roiaume, and both a Regno.

e Domestay in Com. Cestr. Ep. Cestr. f Domestay in Com. Hereford. Rex in Arenfield. Rex Griffin & Ele vastaverunt hanc terram T. E.

Quandoque Rex Griffin nominatur Rex Mariadoc. e Rot. Pat. Anno 7 H. 7. b Cadwallader King of the Britains, Mar. Parker Archiep. M. S.

i This blessed Queen reigned the years of Augustus, and lived the age of David, a King elder then any King, or Queen since the Conquest, and yet had vegetum corpus et vividam ingenium.

k Lib. 7. fo. 21. b. in Calvins case. Tr. 5 E. 3. 40. alien Bracton (who wrote 1204)

113. m Statutum

pore H. 3. lib. 5. fo. 39. 5. b. Fleta lib. 1. cap. 16. 10 H. 4. fo. 6. acc. Pl. com. 129. a. b. Dier 3. Maria Wallie Anno 12 E. 1. Vid. 10 H. 4. fo. 6.

* Note, divers Monarchs hold their Kingdom of others *jure feudali*. As the Duke of Lumbardy, Cicill, Naples, and Bohemia of the Empire. Granado, Leons of Aragon. Navarre, Portugal, of Castile. And so others. Dorset. Clauf.

15 E. 2. m. 13. De Wallensibus ad Parli. apud Eborum venire facit viz. 24 de discretioribus, legalioribus & validioribus hominibus de partibus Southwallia, & 24 de partibus Northwallia. Rot. Clauf. 20 E. 2. m. 3. acc. 21 Jac. ca. 28. b 27 H. 8. ca. 26. 34 H. 8. ca. 26. 37 H. 8. ca. 26. 18 Eliz. cap. 7.

c The twelve Counties of Wales.

d Trin. 34 Eliz. In the case of Morgan of the report of the Chief Justice Popham.

So it was resolved by divers Justices in Hil. 5 Jac. Regis.

21 Jac. regis c. 70.

Hil. 5 Jac.

Rot. Clauf. Antio 20 E. 2. m. 3.

mont to do) Divina providentia, quæ in sua dispositione non fallitur, inter alia suæ dispensationis munera, quibus nos & regnum nostrum Angliæ decorari dignata est, terram Walliæ cum Incolis suis prius nobis * jure feudali subjectam jam sui gratia in proprietatis nostræ dominium, obstaculis quibuscunque cessantibus, totaliter & cum integritate convertit & coronæ regni prædicti, tanquam partem corporis ejusdem annexuit & univit. *Pet this wise and warlike Nation was long after this not satisfied nor contented, and especially, for that they truly and constantly took part with their rightful Sovereign and liege Lord King Richard the Second; In revenge whereof they had many severe and invective Laws made against them in the Reigns of H. 4. H. 5. &c. All which as unjust are repealed and abrogated. And to say the truth, this Nation was never in quiet, until King H. 7. their own Countryman obtained the Crown. b And yet not so really reduced in his time, as in the Reign of his Son King H. 8. in whose time by certain just Laws made at the humble suit of the Subjects of Wales, the Principality and Dominion of Wales was incorporated and united to the Realm of England; and enacted that every one born in Wales, should enjoy the Liberties, Rights, and Laws of this Realm, as any Subjects naturally born within this Realm should have and inherit, and that they should have Knights of Shires, and Burgesses of Parliament, &c. By the which the Jurisdiction of the legal Courts are thereby so perfectly and plainly established and declared, and their proceedings to be according to the Laws and Customs of England, as we have thought good to refer the judicious Reader to those Acts of Parliament without recital of them, where he shall find the excellent venerable variety of Seats and Courts of Justice, with their proper Jurisdictions according to the Laws of England, the golden Merwand, whereby all mens causes are justly and evenly measured. Only we will add certain things which have not been published before.*

By the said Statute of 34 H. 8. it is enacted that there shall be holden and kept Sessions twice every year in every of the said twelve Shires, that is to say, Glamorgan, Brecknock, Radnor, Carmarthen, Pembroke, Cardigan, Montgomery, Denby, Flint, Carnarvan, Merioneth, and Angleis, which Sessions shall be called the Kings great Sessions of Wales.

d A fine was levied of Lands in the County of Carmarthen, and the Writ of Covenant was Coram Justiciariis nostris magnæ Assise in Corn Carmarthen, and because all the judicial presidents were in that form ever since the making of the Statute, it was adjudged to be good, for Communis error facit jus.

Also in the said Act of 34 H. 8. it was enacted, that the Kings most Royal Majesty should from time to time change, &c. all manner of things before in that Act rehearsed, as to his most excellent wisdom and discretion should be thought convenient, and also to make Laws and Ordinances for the Commonwealth of his said Dominion of Wales at his Majesties pleasure, &c. And albeit the common opinion was, that the same power in so high a degree of trust, as the alteration of Laws, &c. was personal to H. 8. and referred to his wisdom, discretion and pleasure, and therefore extended not to his successors, yet for that the subjects of the Country and Dominion of Wales had been constantly loyal and obedient, and had lived in all dutiful subjection to the Crown of England, to prevent all questions and danger, the said branch of the said Statute of 34 H. 8. is repealed and made void.

It was resolved by all the Justices upon a reference made to them by the Lords of the Privy Council upon consideration had upon the Statutes of 34 H. 8. cap. 26. and 18 Eliz. cap. 8. that the Justices in Wales are to be constituted and made by Letters Patents, as they had been ever since the making of the Statutes, and not by Commission. And upon report of their opinion to the Lord Chancellor for Baron Snigge was constituted and made by Patent accordingly.

Rex dilecto & fidei suo Ricco Damory Justiciarius suo Northwalliæ Salutem. Mandamus vobis quod habito advisamento cum illis hominibus de partibus prædictis, cum quibus melius fore videritis faciendū diversimode sine dilatione venire faciatis

faciatis ad præsens Parliamentum apud Westm. convocatum 24 homines de partibus illis tam Anglicos quam Wallenses ad consentiendum hiis quæ ibid. pro communi commodo & pace & tranquillitate Regni nostri & partium præd. favente Domino contigerit ordinari, Et habeatis ibi nomina præd. 24 hominum, & hoc bre. Teste Rege apud Kenilworth 11 Januarii Anno 20 E. 2. Rot. Claus. m. 3.

12 were English and 12 Welsh. Rot. Claus. 15 E. 2. in dorf. m. 13. Wallenses vocat. ad Parliamentum.

By this and others of like nature it appeareth that Welshmen were in the Reign of E. 2. E. 3. called to our Parliaments.

But now seeing there be Sheriffs throughout all Wales, the Writs are directed to the Sheriffs to cause to be elected Knights, Citizens, and Burgeses, and returnable into the Chancery, where before they were returned into the Parliament.

7 H. 4. c. 15. 11 H. 4. c. 1. 1 H. 5. cap. 1. 8 H. 6. c. 7. 10 H. 6. c. 2. 23 H. 6. c. 15. 6 H. 6. c. 4. 27 H. 8. c. 26. 24 H. 8. c. 26. 35 H. 8. c. 11.

We have seen a Charter of the Earl of Arundell proving, that by the ancient custom of Wales, females could not inherit.

Omnibus Christi fidelibus præsens scriptum inspecturis Johannes Comes Arundel & Dominus de Mautravers, Salutem in Domino. Sciatis nos prædict. Comitum ad prosecutionem & specialem supplicationem Communitatis Tenen' nostrorum tam duarum partium quam tertiæ partis Domini nostri de Osvaldestrie in Marchia Walliæ concessisse pro nobis & hæredibus nostris & per præsentem confirmasse Tenen' nostris prædict', hæred' & assign. suis, quod eorum filia pro defectu exit' masculini, ac eorum proximi consanguinei, tam masculini quam femellæ de cætero hæreditare valeant imperpetuum terras, tenementa & reddit' antecessorum & consanguineorum suorum ubique infra Dominium nostrum præd' eisd' modo & forma quibus utitur in communi lege Angliæ, Wallica consuetudine prius ibid. de contrario usitat' in aliquo non obstante: Salvis semper nobis & hæred' nostris heriotis, releviis, feck' cur' & al' consuetudinibus quibuscumq; de dictis terris & tenementis ante hanc nostram concessionem nobis quomodolibet pertinent. In cujus rei testimonium huic præsentis scripti nostro concessionis Sigillum nostrum fecim' apponi: Hiis testibus, Willielmo Rymam, Thoma Baret, Willielmo Sideney Armigeris, Hugone Burgh, ten' Domini nostri præd', Rich. Ireland, Hoel ap Ogn Gouch, & aliis. Dat' in hospitio nostro London vicesimo quinto die mensis Aprilis An. Regni Regis Henrici Sexti post conquestum Octavo.

Marchia Walliæ.

Wallica consuetudo.

At this day women are inheritable in Wales according to the Common Law in England:

* Ordinatio de consuetudinibus Northwalliæ & Westwalliæ.

These Britons were ever lovers of the Laws of England, for at the Parliament holden a in 4 H. 4. they petitioned the King, that in all cases of the Crown throughout every Liberty in Wales the Laws of England might be only used. Whereunto the King yielded, and that his Council should take order therein.

b Quia Episcopi Wallenses ex antiqua consuetudine testamentum aliquod condere non potuerunt, Rex licentiam dedit Episcopo Bangor, quod possit condere testamentum suum non obstante quod Episcopi Wallenses ex antiqua consuetudine testamentum aliquod condere non possunt. See the Chapter of the Consistory Courts of Archbishops and Bishops, fol.

c Where execution shall be made of lands in the Marches by the Sheriff of the County next adjoining, sicut solebat antiquitus. See the Record at large.

d Assach is a British word and signifieth a custom in Wales, which was to excuse one of the death of a man by the oath of 300 men. But this strange kind of excuse or acquital is abrogated by Statute.

e There was also a certain trial in Wales called a Raythe, but that is also abrogated.

* 9 E. 2. m. 3. 4 Rot. Par. 4 H. 4. nu. 100. 6 Rot. Par. 13 E. 1. m. 21. Vid. Hil. 20 E. 1. coram Rege. Ro. 37. 22 Wallia. Pasch. 10 E. 2. coram Rege. Rot. 37. 18 E. 2. Rot. 73. Trin. 5 E. 3. Rot. 40. coram Rege. c Hil. 18 E. 2. Rot. 73. cor. Rege. Gloc. 18 E. 2. Ass. 382. Rot. Parl. 18 E. 1. Rot. 3. 13 E. 3. jurisdiction. 33. 28 E. 2. c. 2. 5 E. 3. f. 30. 45 E. 3. br. 588. 21 H. 3. br. 881. simile. d 1 H. 5. cap. 6. e 6 H. 6. nu. 33.

C A P. XLVIII.

The Court of the President and Council in the Dominion and Principality of Wales, and the Marches of the same.

Laving now the Legal Courts in the Dominion of Wales, to proceed by the right rule, secundum legem & consuetudinem Angliæ, Let us speak somewhat of the Court of Equity before the President and Council there.

This Court is strengthened and warranted by the Statute of 34 H.8. cap. 26. with a reference to prescription before it, in these Words.

Item, That there shall be, and remain a President and Council in the said Dominion and Principality of *Wales*, and the Marches of the same, with all Officers, Clerks, and incidents to the same in manner and form as heretofore hath been used and accustomed: which President and Council shall have power and authority to hear and determine by their wisdoms and discretions such causes and matters as be, or hereafter shall be assigned to them by the Kings Majesty, as heretofore hath been accustomed and used.

They sit by force of the Kings Commission and Instructions, and proceed as in a Court of Equity by their wisdoms and discretions. Herefordshire, Worcester-shire, Shropshire, and Gloucestershire are included within this Commission, pretending that these Four Shires are within the Marches of Wales.

That these Four Shires are no part of the Marches of Wales but ancient Shires of the Realm of England, appeareth by six manner of proofs.

First, By express Words, viz. 18 E.2. Aff. 82. 1 E.3. 14. in Dower. 7 E.3. 9 E.3. in Dower. 6 H.4. fol. 9. in Scire fac. F.N.B. 168.

Secondly, By Acts of Parliament, viz. Prærog. Regis. 17 E.2. cap. 1. 28 E.3. cap. 2. 2 H.4. ca. 12. & 16, 17. 23 H.6. c. 5. 27 H.6. c. 4. 31 H.6. c. 4. 32 H.8. cap. 13. 13 El. cap. 13.

Thirdly, By Records of Parliament. 3 R.2. nu. 29 & 30.

Fourthly, By reason, 1. These four Shires were ancient English Shires, and governed by the Laws of England, and not by the discretion of the President and Council: and this were to bring their inheritances, goods, &c. ad aliud examen. 2. At one and the same time there were in former times Carls of the Marches of Wales, and several Carls of these four Counties, and therefore they could not be one and the same.

Fifthly, By the resolution aforesaid of those four Judges concerning Cheshire and Flintshire (which were included also within the Commission) that they were not within the Marches of Wales, and therefore out of the jurisdiction of the President and Council, and so remain until this day: for a Commission without an Act of Parliament cannot raise a Court of Equity, as often hath been said before.

Lastly, By the commandment of the King, all the Justices of England, and Barons of the Exchequer were assembled concerning the jurisdiction of the President and Council of Wales, and the Marches of the same, who upon hearing of Council learned on divers days, and upon mature deliberation resolved una voce, that the said Four Counties were not within the jurisdiction of the President and Council. 2. That forasmuch as the President and Council have

Rot. Par. 16 R.2. nu. 44. there was a President of Wales. 34 H.8. cap. 26.

See before in the Chapter of the County Palatine of Chester. p. 212.

Mich. 2 Jac. Regis the care of Edw. Lord Zouch President of Wales.

a li

a limited authority if they proceed in any matter that is out of their jurisdiction either in respect of the place, or of the authority limited to them, a prohibition may be granted, as to the Marshall's and the like. Which resolution being made known to his Majesty, his Majesty was graciously pleased, that the Lord President's Commission should be reformed: whereupon the Lord Zouch gave over his place. And yet the Commission was not after reformed in all points, as it ought to have been.

Regist. 4 & 8.
F.N.B. 39.b.45.f.
46.a.171.159.
185, 186, 187.
19 H 6.54.

Rodry Maure, or Rodry the great, King of Wales, son of Mervyn Fryth had issue three sons, Mervyn, Anarawd, and Cadelh. In the year wherein he died, viz. An. Dom. 877. (King Alfred, alias Alured, then reigning in England) this great Rodry divided his Kingdom of Wales into three Principalities. The first he called Guyneth, the English North-Wales, the Latinist Venedotia. The second Principality was called Powisland, in Latin Powisia, of some West-Wales, bordering upon England. The third he called Deheubarth, the English South-Wales, in Latin Demetia. The first Principality, some say, he gave to Mervyn, after others, to Anarawd. The second to Anarawd, some say, to Cadelh. The third to Cadelh, some say, to Mervyn. The first was the best, because it was the quietest. The second was often invaded and troubled by the English. Into the third often incursions were made by the English, the Norman, and the Fleming. The division of this Kingdom (howsoever it was) wrought in process of time such a division between these Princes, as it was never quiet until it came under one Monarch and King again: For the Royal dignity of a Monarch or King, from whence all other subordinate dignities, tanquam lumen de lumine, are derived without any diminution, will suffer no division. Regia dignitas est indivisibilis; & quælibet alia derivativa dignitas est similiter indivisibilis.

This is added for the better understanding of Records and Histories concerning Wales.

The most woful event that fell out in this Realm, when Gorbodug divided this Kingdom between his two sons, Ferrex and Porrex, and what heavy event came to pass, until it was reduced again under one Monarch, let our Histories tell you: And letting pass others, I cannot over-pass the miserable estate with in this Kingdom under the Heptarchy, until all was reunited under one Sovereign. And this is the reason, that in England, Scotland, and Ireland, the Royal dignity is descendible to the eldest daughter or sister, &c.

But let us look a little into foreign parts. Oedipus King of the Thebanes had issue two sons, Polynices, and Eteocles: he ordained, that after his decease, his two sons should alternatim by course, &c. reign in his Kingdom. But what was the event? Fratres de Regni hereditate dissidentes singulari certamine congressi mutuis vulneribus ceciderunt. But to return again to our Wales.

Stat. in Theb.

It is divided from England by a ditch after the name of that King that made it, called King Offa his ditch.

Cambden in the County of Radnor.

King E. 3. at the Parliament holden Anno 17. of his reign, by Charter established by Authority of Parliament, created Edward (called the black Prince) Prince of Wales in these words, De Concilio Prelatorum, Comitum, Baronum & Communium in generali Parlamento nostro apud Westm' die Lunæ in Quindena Pasche proxime præterito convocato ipsum Edward' Principem Wallie fecimus & creavimus, & dictum Principatum sibi dedimus & concessimus, & per Cartam nostram confirmavimus, ac ipsum de dicto Principatu, ut ibidem præficiendo præsideat, & præsidendo dictas partes dirigat & defendat, per a sertum in Capite, & annulum in digito aureum, ac b virgam argenteam investivimus juxta morem: Habendum & tenendum de nobis sibi & hæredibus suis Regibus Angliæ imperpetuum, &c. Out of this Charter we observe, that in this Creation there is a great mystery, for less then an estate of inheritance so great a Prince could not have, and an absolute estate of inheritance in so great a Principality as Wales, the Kings meaning was (this Principality being so dear unto him) he should not have: therefore a qualified fee therein he had in this form, sibi & hæredibus suis Regibus Angliæ, that by his decease, or attaining to the Crown this dignity might be extinguished in the Crown, to the end that the

Carra creationis Principis Wallie Authoritate Parliamenti. Anno 17 E. 3.

a A Chapelet of gold made in form of a Garland.

b This virge, rod, or Scepter in latter creations for more honor is changed from silver to a Verge or Scepter of gold. Sibi & hæredibus regibus Angliæ.

King

See the Princes
case. Lib. 3.

Vide Cartam E. 3.
dat. apud Pontem
fract. 18 Martii.
7 E. 3. & Hil. 33 E.
3. irrotulat' in
Scaccario ex parte
Rememorator' The-
saur'. Rot. 15. The
Black Prince crea-
ted Earl being
three years old.
* Hil. An. 20 E. 1.
Corā Rege Rot.
14 Walliz.
† Commissionarij.

Inauditum est.

Irrotulatur istud
Recordum inter
Placita de Banco
Term' Pasc. An.
14 E. 1.
a Ortelius in Car-
ta antiqua Britan-
niæ.
b Homph. Lloyd
apud Ortelium in
the same Geograp.
c Idem in Fragm.
Britan' Historiz.
d Tacitus. Vide
supra p. 9.
e Nota Validissi-
mas gentes.
f Rot. Pat. 9 E. 2.
m. 3.
g Lib. Int. Co. fol.
549, 550.

King for the time being should ever have the honor and power to create his heir apparent Prince of Wales, as he himself had been by his Progenitor. But otherwise it is in case of the Duchy of Cornwall as in the Princes case, ubi sup. appeareth.

And in the same manner is the dignity of the Noble and primary Countie Palatine of Chester at the same time granted to the Prince, sibi & hæredibus suis Regibus Angliæ.

* Ob quamplurimos excessus more hostili vexillo displicato per Gilbertum de Clare Comitem Glouc' Hertf. & homines suos de Morgannon illatos contra Humfredum de Bohun Comitem Heref. & Essex & homines suos de Brekenock, Dominus Rex assignavit † Episcopum Eliens. & alios Commissionar' ad inquirendum, &c. Mandavit etiam Dominus Rex per literas suas dilectis & fidelibus suis Johanni Hastings, Johanni fil' Reginaldi, Edmundo de Mortuo mari, Rogero de Mortuo mari, Theobaldo de Verdon, Johanni Tregose & Galfrido de Cannil, quod interfint apud Brekenock, &c. Et postea venerunt apud Lanridon. Voluit idem Dominus Rex pro statu & jure suo per ipsos Justiciarios quod inde rei veritas inquiretur per sacram' tam magnatum, quam aliorum proborum, & legalium hominum de partibus Walliæ & Com' Glouc' & Heref. per quos, &c. cujuscunque conditionis fuissent, ita quod nulli parceretur in hac parte, eo quod res ista Dominum Regem & Coronam & dignitatem suam tangit, &c. Dictum est ex parte Domini Regis Johanni de Hastings & omnibus aliis magnatibus supra nominatis quod pro statu & jure Regni, & pro conservatione dignitatis Coronæ & pacis suæ apponant manum ad librum, ad faciend' id quod eis ex parte Domini Regis injungeretur: Qui omnes unanimiter respondent, quod inauditum est quod ipsi vel eorum antecessores hætenus in hujusmodi casu ad præstandum aliquod sacramentum coacti fuer', &c. Ac pluries eisdem magnatibus ex parte ipsius Regis conjunctim & separatim, libroque eis porrecto, injunctum est quod faciant sacram'; Responderunt demum omnes singulatim quod nihil inde facerent sine consideratione Parium suorum. Demum Comes Glouc' fecit finem cum Domino Rege pro decem millibus Marcarum, & Comes Essex pro mille marcis, & uterque eorum committitur Marechallo. (Recordum perlongum est, & continet tres rotulos.) Et ob affinitatem, & consanguinitatem cum Rege perdonantur plurima. Tamen forisfecerunt libertates suas durante vita ipsorum. Et post decessum eorum, hæredes sui rehabeant.

But now to take our leave of this Principality of Wales, this is that the Romans called by the name of a Britannia secunda, and sometimes b Valentia, and by the Britains themselves called c Cambria. And we will conclude this Treatise of Wales, &c. with that which that d excellent Historian speaking of the wars between the Roman and the ancient Britain, saith, Nec aliud adversus e validissimas gentes pro nobis utilius, quam quod in commune non consulunt, rarus ad propulsandum commune periculum conventus: ita dum singuli pugnant, universi vincuntur.

f See 2 part. Pat. 9 E. 2. m. 3. Ordinat' de consuetud' North-walliæ & West-walliæ.

g Vid. Lib. Int. Co. fo. 549, 550. Thæ notable matters concerning Wales. 1. Of the government of Wales before 27 H. 8. 2. Of Lordship, Marches, and their authorities and liberties. 3. The Act of 1 & 2 Ph. & Mar. concerning the same.

CAP. XLIX.

The President and Council in the North.

This Council is neither warranted by Act of Parliament, nor by prescription, but raised by King H. 8. by his Commission upon these occasions, and in the manner hereafter expressed. After the suppression of Monasteries of the yearly value of two hundred pound or under, which was by Act of Parliament 4 Febr. Anno 27 H. 8. in the beginning of 28 H. 8. there was a great insurrection of the Lord Hussey and 20800 persons in Lincolnshire, pretending it to be for the cause of Religion: against whom Charles Brandon Duke of Suffolk went and appeased them. As soon as they were appeased, a great Rebellion for the same pretence of 40000 of that County, of whom Sir Robert Aske was Leader: against whom the Duke of Norf. and others went, and dispersed them. Soon after a great Commotion for the same pretence was raised in Lancashire of men in that County, and in Cumberland, Westmerland, and Northumberland: against whom the Earl of Derby was employed, and quieted them. After this Musgrave Tilly and others to a great multitude did rise, and assaulted Carlisle Castle, whom the Duke of Norf. overthrew. Soon after Sir Francis Bigot with a great number of people rose at Settrington, Pickering, Leigh, and Scarborough in Yorkshire, whom the Duke of Norf. pacified. And after this the Lord Darcy, Ask, Constable, Bulmer, and others began a new Rebellion about Hull in Yorkshire, whom the Duke of Norf. appeased. And all these Rebellions fell out between the beginning of 28 H. 8. and 30 H. 8.

The King intending the suppression of the great Monasteries, which in effect he brought to pass in Anno 31 H. 8. for preventing of future dangers, and keeping those Northern Counties in quiet, in Anno 31 of his Reign raised a President and Council there, and gave them besides two several powers and authorities under one Great Seal, the one of Oier and Terminer, De quibuscunque congregationibus & conventiculis illicitis coadunationibus, considerationibus, Lollardiis, misprisionibus, falsis allegantiis, transgressionibus, riotis, routis, retentionibus, contemptibus, falsitatibus, manutenentiis, oppressionibus, violentiis, extortionibus, & aliis malefactis, offensis, & injuriis quibuscunque, per quæ pax & tranquillitas subditorum nostrorum in Com' Eborum, Northumberland, Westmerland, Durham & Com' Civitatis Eborum, Kingston super Hull, & Newcastle super Tinam gravetur, &c. secundum legem & consuetudinem regni nostri Angliæ, vel a aliter secundum sanas discretionones vestras audiend' & terminand'. The other Authority was, b Nec non quascunque actiones reales, seu de libero tenemento, & personales causasque debitorum & demandorum quorumcunque in Com' prædictis, quando ambæ partes vel altera pars sic paupertate gravata fuer', quod commodè jus suum secundum legem regni nostri aliter prosequi non possit, similiter secundum leges & consuetudines regni nostri Angliæ, vel aliter secundum sanas discretionones vestras audiend' & terminand'.

But these authorities were granted, to the end that Commissioners by mediation might quiet controversies when one of the parties or both were poor, who are ever most clamorous. And all the Authority they had was expressed in the Patents or Commission under the Great Seal, without any reference to instructions, or any instructions at all. But afterwards, for that the said Commission was against Law, and to the end, that their Authority should not be known,

said, but also for that actions real and personal were not to be heard and determined by Commission, but according to the Laws of the Realm. Vid. 2 Eliz. Dier 175.

Anno 31 H. 8. c.
parte Roberto
Landaven's Episcopo
Præsidentem
Concilii, &c.
& aliis fact.

a First, It was resolved by all the Judges of the Court of Common Pleas, Trin. 6 Jac. that this clause is against Law, as the like had been formerly often resolved. See before Cap. of the Court of Requests.

b 2. It was then also clearly resolved, that this latter clause was against Law, not only for the cause afore-

It k

they

they procured the first institution to be ex diametro altered, viz. that their Commission should not give them any express authority at all, but wholly did refer their authority to certain instructions which they kept themselves in private, and were not enrolled in any Court, whereunto the subject might have resort. Sed misera servitus est, ubi jus est vagum, aut incognitum. And thereupon King James being informed hereof by the Judges of the Common Pleas (who had granted prohibitions to the President and Council) gave order that their instructions should be enrolled, to the end that the subject might take advice of learned Council what course he might take to enjoy the benefit of the Laws of the Realm, his best birthright.

This is left out of the print in latter time, but it is in the Parliament Roll, &c.

13 El. cap. 13.
See in the Chapter of the Court of Request, answer made to this objection in like case

And it appeareth in the Subsidy in Anno 32 H.8. cap. 50. that H.8. raised not only this President and Council, but a President and Council also having like authority in the Western parts, pretending it to be for their ease to receive Justice at their own doors, but they of Cornwall, Devon, &c. desirous to live under the immediate government of the King, and the Common Law opposed it, Et sic Commissio illa cito evanuit: which Commission under the Great Seal we have seen. See in the Statute of 13 El. where the President and Council of York is mentioned, and no man doubteth, but that there is a President and Council de facto, but what Jurisdiction they have is the question.

Thus much (having taken upon us to write) we have clearly and plainly delivered our opinion, and he that searcheth the secret of hearts, knoweth that we have published nothing herein or in any other of our works, reluctantie conscientia.

And in respect of some continuance it hath had, and many decrees made, it were worthy of the Wisdom of a Parliament for some establishment to be had therein.

CAP. L.

*The Courts and their Jurisdictions within the City of London; And first of**The Court of the Hustings.*

For the Antiquity and name of this noble City, you may read in Lambard Inter leges Edovardi Regis, fo. 136. b. Sed utere tuo judicio, nihil enim impedio. * But Ammianus Marcellinus an approved Author above 1200 years since, calleth it Vetussum oppidum. And Cornelius Tacitus, (who married the daughter of Lucius Agricola the Roman, and was here with him by the space of seven years) affirmeth Quod Londinum tempore Neronis (which is above 1500 years past) fuit copia negotiatorum & comatu maxime celebre. To be short, it is Camera regis, Reipublicæ cor, & totius regni Epitome.

Lib. 8. fo. 130. in the case of the City of London.
* For the Antiquity.
For the Antiquity and Name.

And in searching among such Records as we had observed, of or concerning this noble City, we have observed a Charter in the Saxon tongue made by William the Conqueror in these words; William Cýng gæit william Birceop 7 Godspæger pontgepan 7 ealle þa Buppapen þe on Lunden beon, &c. i. William the King gæteþ William the Bishop and Godfrey the Portreeve, and all the Burgeses that in London be, &c.

This is the highest Court and of the greatest celebrity within London. It is holden before the Mayor and Sheriffs, of all pleas, real, mixt, and personal. Nota, the rule of the Register is, Quodlibet breve, quod tangit liberum tenementum in London, dirigitur Majori five Custodi & Vicecomitibus; & alia breviam Vicecomitibus.

Regist. 2. b.
F. N. B. 6. f.

This word Hustings is derived of two Saxon words, viz. Hus which signifieth a house, or bench, and things, that is, causes, or pleas, as much to say, as the Bench, or Court of pleas, for Bancus or Bench is taken for a Court, as the Kings Bench, the Common Bench, &c.

Fleta lib. 2. in his Chapter De differentiis Curiarum. Habet Rex Curiam suam, &c. Et in Civitatibus & Burgis & in Hustings London, Lincoln, Winton & Eborum & alibi in libertatibus, &c. Et cap. 48. Habet Rex curiam suam in Civitatibus, Burgis & locis exemptis, a sicut in Hustings London, Winton, Lincoln, Eborum, & apud Shepey, ubi Barones & Cives recordum habent, &c. So as neither the name nor the Court is appropriated to London.

Fleta lib. 2. ca. h. & 28.
a F. N. B. 61. 9.
juris utrum.
62. b. partition. &
199. ex gravi querela. b.

b For Writs of Error to be brought of any Judgment in the Hustings; See the Register and F. N. B.

b Regist. 130. f. 121.
F. N. B. 23. c.

c Concerning forrain Wouchers, and forrain pleas, see F. N. B. fo. 6. E. & Stat. de Glouc' cap. 12.

c F. N. B. 6. c.
Glouc. cap. 12.
2 part. Instruct.

Of Lands holden, no Writ doth lye but in London according to the custom, Dier 15 El. 317. Judgment of the outlawries in the Hustings is not given by the Mayor, who is Coroner or his Deputy, but by the Recorder by the custom of this City.

33 E. 3. Justit. 60.
36 H. 6. 33.

2, 3. *The two Courts of the Sheriffs.*

In Curia Civitatis prædict' coram Vicecom' sine brevi nostro secundum consuetudinem ejusdem Civitatis. If an erroneous Judgment be given before the

Regist. ubi sup.
F. N. B. 23. d.

Sheriffs, the party grieved shall sue a Writ of Error, and remove this before the Mayor and Sheriffs in the Hustings.

Stephanides cap.
de dispositione
urbis.

For the Antiquity of the Sheriffs and their Courts, Fitz Stephen who wrote of the government of London in the Reign of King Stephen, of this City saith;
Hæc Civitas Urbe Roma, secundum Chronicorum fidem, satis antiquior est, &c. Unde & adhuc antiquis eisdem utantur legibus communibus institutis; hæc similiter illi regionibus est distincta, habent annuos pro Consulibus Vicecomites, habet Senatoriam dignitatem, & Magistratus minores, &c. ad genera causarum, deliberative, demonstrative, judicialis loca sua fora singula, habet sua diebus Statutis Comitia, &c.

Nota.

In Lib. Abbat. de
Ramsey.

* Tempore H. 1.

In the book of the Abby of Ramsey to a conveyance or concord * without date, made in the Court of the Hustings of London of a certain house in Walbroc within the City, between Wilnothus de Walbroc, and Renaldum Abbatem de Ramsey, the Witnesses were (amongst others) Willielmus de Einsford Vicecomes de London, & Johannes Subvicecomes ejus, & Gervasius Clericus ejus. More might be said hereof, but it is clear, that so long as this City hath been a County of it self, so long there have been Sheriffs, for it cannot be a County without Sheriffs. There are within the walls of this City 97 Parishes, and out of the walls 16 Parishes; standing partly within the Liberties of the City, and part without in Midd. and Surry.

4. ¶ The Court of Equity before the Lord Mayor, commonly called, The Court of Conscience.

1 H. 6. 14. Lib. 8.
fo. 126.
Lib. Int. Rast.
Custom 21. &
Viller.

The Custom of London is, and hath been time out of mind, that when a man is impleaded before the Sheriffs, the Mayor upon the suggestion of the Defendant may send for the parties and for the Record, and examine the parties upon their pleas; and if it be found upon his examination that the Plaintiff is satisfied, that he may award that the Plaintiff shall be barred: and this was holden by the Court to be a good Custom; but by no Custom he can examine after judgment. Now, a Court of Equity may be had by prescription, but cannot be raised by grant, as hath been said in the Chapter of the Chancery, and of the County Palatine of Chester.

5. ¶ The Court of the Mayor and Aldermen.

See 43 E. 1. 12.
In fine.
Lib. 4. fol. 64. 65.
Fulwoods case.
The Print is 28 E.
3. cap. 10. but it
should be 27 E. 3.
ca. 10. And so re-
solved by Parlia-
ment, in 1 H. 4.
ca. 15. Altered in
the penalty. 17 R.
2. 805. Par. 24. 26.
explained.
Parliament not to
extend to error in
judgment.

This is a Court of Record, and consisteth of the Lord Mayor, the Recorder, and 23 Aldermen, whereof the two Sheriffs being Aldermen are part.

It is ordained and established that the Mayor, Sheriffs and Aldermen, which have the governance of the City, shall redress and correct the errors, defaults and misprisions which be used in the City of London, for default of good governance of the Mayor, Sheriffs and Aldermen, &c. This is declaratory of their former power of governance, and for this cause principally amongst others, this Court was instituted.

In this Court are many Courts, as namely,

6. ¶ The Court of Orphans.

The Mayor and Aldermen by Custom have the custody of Orphans within the City. And if they commit the custody of the Orphans to another man, he shall have a ravishment of Ward, if the Orphan be taken away.

It is enacted, that the Mayor and Chamberlain of London for the time being, shall

F. N. B. 142. g.
32 E. 3. 3. 31.
1 R. 2. 1. 166.
Lib. 4. 64. 65.
Rot. Par. 1 R. 2.
nu. 130.

shall have the keeping of all the lands and goods of such Dyphans as happen within the City, saving to the King and other Lords their rights of such as hold of them out of the same liberty.

A Recognizance may be acknowledged in this Court before the Mayor and Aldermen to the Chamberlain for Dyphans. Lib. 4. fol. 64, 65. Fulwoods case.

The Chamberlain is a sole corporation to him and his successors for Dyphans: and a recognizance or bond made to him and his successors concerning Dyphans shall by custom go to his successor. Lib. 4. ubi sup.

The government of Dyphans belong to the Mayor and Aldermen, and they have jurisdiction of them, and therefore if any Dyphan sue in the Ecclesiastical Court, or elsewhere for a legacy, or duty due to them by the Custom, a Prohibition doth lye. See the First part of the Institutes, Sect. 267. how the goods of a Freeman of London shall be divided. 7 H. 4. cap. 9. Rot. Par. 9 H. 4. nu. 30.

For the Liberties of London, see 50 E. 3. fol. 143.

An Act was made in 7 H. 4. c. 9. much prejudicial to the liberties of this City, which is in print, and it was repealed in 9 H. 4. n. 30. which is not printed.

It would ask a Treatise by it self to handle at large the other authorities and powers of the Mayor and Aldermen in the Court of Aldermen, and of the other Courts within this City, which we will run over as briefly as we can. And the rather, for that in my Books of Reports I have published many cases concerning the Courts, Customs, Liberties, Franchises, and Privileges of this City, and also in the First part of the Institutes, and in this and other parts thereof. Lib. 2. fol. 57. Lib. 4. fol. 18, 54. 64, 65. & 113. Lib. 5. fol. 63, 64. 73. 83. 107. Lib. 8. fol. 122.

125, 126, 127. Vide 129. Lib. 11. fol. 53. & 194. James Bagges his case. See the first part of the Institutes, fol. 76. Sect. 267. See the second part of the Institutes, Mag. Cart. cap. 9.

7. *The Court of Common Council.*

This Court hath some resemblance of the high Court of Parliament, for it consisteth of two houses, viz. the one of the Mayor and Aldermen, and the other of such as be of the Common assembly resembling the whole Commynalty of London. In this Court they may make constitutions and Laws for advancement of Trade and Traffick: for the better execution of the Laws and Statutes of the Realm, or pro bono publico, and for the good government of the City. So as these Constitutions and Laws be not contrary to the Laws and Statutes of the Realm. And this being made by the Mayor, Aldermen, and Commynalty, do bind within this City and the Liberties thereof. They of the Common assembly do give their assent by holding up their hands. Lib. 5. fol. 62, 63. the Chamberlains case. Lib. 8. f. 123. 125. Le case del Ciry de Londres.

8. *The Court of the Ward-mote.*

Ward-mote is derived from Ward and Mote, that is, the Ward Court. In London the Parishes are as Towns, and the Wards as Hundreds, and therefore Riens diens Gard was a good challenge at the Common Law. 7 H. 6. 36, 38. 7 H. 4.

In this City there are 26 Wards divided for the government of them amongst the 24 Aldermen of the City. This Wardmote inquest, consisting of 12 or more of every Ward, shall inquire of such persons as have not given or amended their parts and portions of the Streets and Lanes within the said City. 32 H. 8. cap. 17.

9. *The Court of Hall-mote.*

This is derived of Hall and Mote, as much as to say the Hall Court, i. Conventus Civium in Aulam publicam, every Company of London having an Hall wherein they keep their Courts, and this Court anciently called Hall-mote or Folke-mote.

10. ¶ *The Court of the Chamberlain for Apprentices.*

Lib. 8. fol. 129. The *This Court concerning the making free of Apprentices. One may be free of the City of London three manner of ways, viz. by Service, as here in Case of Apprentices: 2. By Birthright, the son of a Freeman: and 3. By Redemption, by order of the Court of Aldermen.*

Now to treat of the great and notable Franchises, Liberties, and Customs of the City of London, would require a whole Volume of it self. But there is a most beneficial Statute made for the strengthening and preservation of the same, which I know no other Corporation hath. *a* It is enacted that the Citizens of London shall enjoy all their whole liberties whatsoever with this Clause, *Licet usi non fuerunt vel abusi fuerunt*, and notwithstanding any ** Statute to the contrary, &c.* *Lege statutum*, for by this Act the City may claim liberties by Prescription, Charter, or Parliament, notwithstanding any Statute made before 7 R. 2. And this is the Statute mentioned in our Books.

a Rot. Par. 7 R. 2. nu. 37.
Vid. inf. 252, 253.
** Nota hoc.* 8 H. 7. 4. b. Dier 22 El. 373. 7 H. 6. 1. 21 H. 7. 16, 17. Pl. Com. 36. b. 38. 47. 59. Lib. 8. fol. 129.

11. ¶ *The Court of the conservation of the Water and River of Thames, &c.*

The Mayor of London for the time being hath the conservation and rule of Water and River of the Thames, and the issues, breaches, and lands overflown, &c. from the Bridges of Stanes unto the water of Yendall and Medway, and authority as touching punition for using unlawful Nets, and other unlawful Engines in fishing, and to all correction and punishment there concerning unlawful Nets and Engines there. In all Commissions touching the water of Ley, the Mayor of London shall be one. See hereafter Cap. Commission of Sewers the Statute of 3 Jac. c. 14. that Sewers that fall into the Thames shall be subject to the Commission of Sewers.

4 H. 7. cap. 15.

Rot. Parl. 2 H. 5. nu. 15.

Rot. Parl. 2 H. 5. nu. 16.

3 Jac. cap. 14.

12. ¶ *The Court of the Coroner in London.*

The Mayor is Coroner within the City of London, and the Court of the Coroner is holden before him or his Deputy. Vide postea in the Chapter of the Coroner.

13. ¶ *The Court of the Escheator in London.*

The Lord Mayor is also Escheator within the City, and this Court is holden before him or his Deputy. See before in the Chapter of Escheator.

14. ¶ *The Court of Policies and of Assurances in London.*

This Court stteth by force of the Commission under the Great Seal warranted by Act of Parliament, An. 43 El. c. 12. there being an Officer or Clerk to register assurances, the jurisdiction of which Court you may read in that Act of Parliament made to encourage Merchants to trade and traffick, the benefit whereof appeareth there, and is too long to be recited, and the rather for that we can add nothing to that Act of Parliament.

43 Eliz. cap. 12.

15. *The Court of the Tower of London.*

This Court is holden within the Werge of London befoze the Steward there by prescription of debt, trespass, and other Actions of any sum greater or lesser, whereof you may read in 4 E. 4. fol. 36. a. b.

4 E. 4. 36. a. b.

Note, where it is said, that the Tower of London is within the City of London, it is thus to be understood, that the ancient Wall of London (the mention whereof yet appeareth) extendeth through the Tower, and all that which is inclosed with the said wall, viz. on the West part thereof, is within the City of London, that is to say, in the Parish of All-Saints-Barking within the Ward of the Tower of London. And the residue of the Tower of London, on the East part of that ancient wall is within the County of Middlesex. And this upon view and examination was found out, Mic. 13 Jac. Regis, in the case of Sir Thomas Overbury, who was poisoned in a Chamber in the Tower on the west part of that old wall. And therefore Weston the principal murderer was tried befoze Commissioners of Oier and Terminer in London, and so was Sir Gervase Elvice Lieutenant of the Tower, as accessary.

16. *Of the Jurisdiction and authority of the President, Censors, and Comminalty of the Colledge of Physicians scituate in Knight-Rider-street in the Ward of Cattle Barnard within the City of London and seven miles compass.*

Of this Colledge, and of their jurisdiction and authority, sufficient hath been said in the 8 Book of Reports in Doctor Bonhams case, whereunto we refer the studious Reader. Hereunto we will add for the safety of Physicians, especially of the Kings Physicians; a Record worthy of observation.

Lib 8. fol. 107. &c.
Dr. Bonhams case:
See the Statutes of
3 H. 8. c. 6. & 11.
14 H. 8. c. 5. 1 Mar.
c. 9. 32 H. 8. c. 40.
42. 34 H. 8. cap. 8.
* Rot. Pat. 32 H. 6.
m. 17. by what
Warrant Physick
is to be given to
the King.

* Rex adversa valetudine laborans de assensu concilii sui assignavit Johannem Arundel, Johannem Saceby, & W. Hatcliffe Medicos: Robertum Warren & Johannem Marshall Chirurgos ad libere ministrandum & exequendum in & circa personam suam; Imprimis, viz. quod licite valeant moderare sibi dietam suam & quod possint ministrare Potiones, Syrupos, Confectiones, Laxativas medicinas, Clysteria, Suppositoria, Caput purgea, Gargarismata Lealnen, epithimota, fomentationes, embrocationes, capitis rasuram, unctiones, emplastra, cerera ventos. cum sacrificacione vel sine, emorodorum provocationes, &c. Dantes singulis in mandatis quod in executione premissorum sint intendentes, &c.

Upon this, Four things are to be observed. 1. That no Physick ought to be given to the King without good warrant. 2. That this Warrant ought to be made by the advice of his Council. 3. They ought to minister no other Physick then that which is set down in writing. 4. That they may use the aid of those Chirurgeons named in the Warrant, but of no Apothecary; but to prepare and do all things themselves, &c. And the reason of all this is the precious regard had of the health and safety of the King, which is the head of the Commonwealth. * The Science of Physick containeth the knowledge of Chyrurgery.

* 32 H. 8. cap. 40.
3 E. 3. coron. 163.

If one that is of the mystery of a Physician take a man in cure and giveth him such physick as within thre days he dye thereof, without any felonious intent, and against his will, it is no Homicide.

But Britton saith, that if one that is not of the mystery of a Physician or Chyrurgion, take upon him the cure of a man and he dieth of the Potion or Medicine, that is (saith he) robert felony.

Britton cap. 5.
De homicides.

Physicians and Chyrurgeions soient Sages en leur faculties, eyent fanes les consciences, cy que rien ne ent failli a faire cure, filz ne scavoient a bone chesemitter, ou filz a lone chesfe scavoient & sentre meitent nequidant follement ou negligentment

Mirror cap. 4. §.
De homicide.
Verb. [dant part.]

negligentment issint que ilz mittont froide pur chaude ou le revers, ou trope peu de cure, ou nemi mitter un due diligence, & nosmement in arsons & abscessions que sont defend' a fare forsq; al peril des mesters si lour patients moreront ou perdent memorie, in tiels cafes sont ils homicides ou mayhemeres.

And thus much concerning Physicians.

For Courts holden in other Cities, Towns Corporate, and Burghs, our purpose is not, to treat of them, because they are private and sufficiently known; but let us say somewhat of the liberties, franchises, and immunities of this noble City.

Parl. 17 R. 2. n. 26. It is enacted, that the Statute of 28 E. 3. c. 10. shall not extend to any erroneous judgment given or to be given in the City of London.

Regist. 267. b. See after, c. 54. the ancient office of garbling of spices, &c.

There is a writ in the Register necessary to be put in execution for the wholeness of air in London, and in all other Cities, &c. De vicis & venellis mutandis.

* See the third part of the Instit. Cap. Burglary or Burglary.

Lourglary or Lourglary is an offence when any cast any corrupt thing appoysoning the water in or about London, compounded of these two words Lour corruption, and Laron a Thief or Felon, as * Burglary: and if any dye by reason of any such offence within a year after, it is felony, and extendeth to all other Cities, Burghs, &c.

It was petitioned to the King, that no man in Cities, Towns, or elsewhere do carry Plates of Silver, but only the Kings Serjeants at Arms, but that they carry Plates of Copper and of no other metal. Whereunto the King answered, [The same shall be so, except the Serjeants of the City of London, who may carry their Plates of Silver within the liberties of London before the Payor, in the presence of the King.]

V. Cartm H. 1. De liber. London.

Omnes homines London sint quieti & liberi, & omnes res eorum per totam Angliam, & per portus maris de theolonio & passagio, & ab omnibus aliis consuetudinibus.

11 H. 3. 18 Febr. special and rare Liberties granted to the City of London.

In the Charter of H. 3. bearing Teste 18 Feb. An. Regni sui 11. the King granted to the City of London Vicecomitatu London & Midd. &c. And in that Charter this special franchise and privilege is granted to the Sheriffs of London and Middlesex for the time being in these words. Ita scilicet quod si illi qui pro tempore fuerint Vicecomites constituti aliquod delictum fecerint, unde misericordia pecunie debeant incurrere, non judicentur ad plus nisi ad misericordia vigint' libr', & hoc sine damno aliorum civium si vicecomit' non sufficiant' ad misericordiarum suarum solutionem. Si vero aliquod delictum fecerint, per quod periculum vite vel membrorum incurrere debeant, judicentur sicut judicari debent per legem civitatis: De hiis autem que ad predictum vicecomitatum pertinent respondeant vicecomites ad Scaccarium nostrum coram Justiciariis nostris. Salvis eisdem vicecomitibus libertatibus quas alii cives London habent.

Anno 11 H. 3. 16 Martii. Duellum.

Hospitium. Per liberationem Marechalii.

In the Charter of the same King bearing date 16 Martii An. Regni sui undecimo supradicto, the King granted to the City of London, Quod nullus civis civitatis predict' faciat duellum, & quod de placitis ad coronam pertinent' se possint diffrationare secundum antiquam consuetudinem civitatis, & quod infra muros civitatis, neque in portefokne nemo capiat hospitium per vim vel per liberationem Marechal', &c. & si quis in aliqua terrarum nostrarum citra mare, vel ultra, sive in portubus maris citra mare, vel ultra, theolonium vel aliquam aliam consuetudinem ab hominibus London ceperit postquam ipse a recto defecerit, Vic' London namium inde apud London capiant.

Anno 11 H. 3. 18 Augusti.

In another Charter of the same King bearing date 18 Augusti Anno 11 supradict' the King did disafforest and diswarren the Forest and Warren of Stanes in the County of Middlesex.

Anno 52 H. 3. 26 Martii. De placitis ad coronam.

And by another Charter of the same King bearing date 26 Martii An. Regni sui 52, the King granted to the Citizens of London in these words, Concessimus eisdem civibus quod de placitis ad coronam pertinent', & hiis maxime, que infra civitatem predictam & ejus suburbium fieri contingent, se possint diffrationare secundum

secundum antiquam consuetudinem civitatis prædictæ, eo tamen excepto, quod super tumulos mortuorum de eo quod dictur essent mortui si viverent non liceat præcise jurare sc. loco mortuorum, qui ante obitum suum electi fuerint ad eos dilationes, sed qui de rebus ad coronam spectantibus appellati fuerint, vel rectati alii liberi & legales eligantur qui idem sine dilatione faciant quod per defunctos memoratos, si venirent fieri operteret, Et quod tam forinseci quam alii attornatos facere possint in Hustingo London tam agendo quam defendendo in curia nostra.

Super tumulos.

Attornati in Hustingo.

The Citizens or Burgeses of London were before and since the Conquest governed by Portgraves or Portgreves until the Reign of R. 1. by whose Charter they were governed by two Bailiffs: and yet King Richard in the first year of his Reign appointed them a Mayor, who continued therein until the Eighth year of King John, and then King John appointed a Mayor. And soasmuch as sometimes the Mayor appointed by the King was no Citizen of London, King John in the Tenth year of his Reign granted to the Citizens liberty and authority to chosse de seipsis a Mayor, &c. And so it continueth unto this day.

Mayor de se ipsis.
Aldermen.
Rot. Parl. 17 R. 2.
nu. 25. enacted.

An. 10. Johannis.

The Aldermen of London were changed by election every year until 28 E. 3. When it was ordered they should not be removed without some special cause. But Rot. Parl. 17 R. 2. nu. 25. it is enacted, that the Aldermen of London shall not from henceforth be yearly chosen, but remain till they be put out for reasonable cause, notwithstanding the Ordinances of E. 2. and E. 3. and so it still continueth.

Mayor de se ipsis.
Aldermen.
Rot. Parl. 17 R. 2.
nu. 25. enacted.

Rot. Pat. Anno 1 E. 3. the King granted that the Citizens of London should not be constrained to go out of the City of London to any War: and the liberties of this City shall not for any cause be taken into the Kings hands. Rot. Parl. 1 E. 3. Autoritate Parliamenti.

War.
Liberties not to be taken into the Kings hands.

Sæ hereafter Cap. of Forrests, pag. Cart H. 1. for their recreation by hunting, &c.

Albeit by the Statute of Magna Carta, and other Acts of Parliament, the liberties, privileges and franchises of the City of London be confirmed: yet the most beneficial of them all is that of * 7 R. 2. before mentioned; whereby it is enacted, that the Citizens of London shall enjoy the same, with this clause, Licet usi non fuerint vel abusi fuerint, a and notwithstanding any Statute to the contrary.

Mag. Cart. cap. 9.
Rot. Pat. 11 H. 3.
Rot. Parl. 5 R. 2.
nu. 19.
50 E. 3. nu. 143.
* Rot. Parl. 7 R. 2.
nu. 37.
Vid. sup. pag. 250.
a Nota hoc.

These notable, rare, and special liberties and privileges we have attempted to remember: but whether herein we have done that good to the City that we intended, we know not, for we have omitted many more of no small number of great rarity and consequence, too long here to be recited.

Sæ before pag. 125. Breve de listis & barris pro duello fac. Vid. Rot. Cart. 18 Februarii 11 H. 3. against the exaction of the Lieutenant of the Tower of Kidelles, &c. 2 part of the Institutes Mag. Cart. cap. 23.

The Court of the Justices assigned for the Government of the Jews.

Justiciarii ad custodiam Judaeorum assignati.

Inter leges Edwardi,
Lamb.
Cap. 29. fo. 133.b.

OMnes Judaei ubicunque in regno sunt, sub tutela & defensione Regis ligea debent esse, nec quilibet eorum alicui diviti se potest subdere sine Regis licentia: Judaei enim & omnia sua regis sunt. Quod si quispiam detinuerit eos, vel pecuniam eorum, perquirat Rex, si vult, tanquam suum proprium.

Rot. Pat. 41 H. 3.
m. 4. nu. 6.

These Justices did hold a Court concerning the custody and government of the Jews, as (amongst many other Records) it appeareth, Rot. Pat. An. 41 H. 3. m. 4. nu. 6. And that then Philip Basset, Philip Lovell, Henry de Bathon, and Simon Passel, &c. were then Justices ad Custodiam Judaeorum assignati. But when the Jews were utterly (as hath been said) banished, this Court ceased, which was in 18 E. 1. Anno Domini 1293. See the Second part of the Institutes Stat. de Judaismo. Rot. Claus. 18 E. 1. Memb. 6. See Tho. Walf. in Hypodigmate Neustriae 18 E. 1.

The Courts of Staincliffe and Frendles Wapentakes.

3 H. 5. cap. 2.
9 H. 6. cap. 10.

BEcause I find mention made in Acts of Parliament of the Courts of Staincliffe and Frendles Wapentakes, &c. I thought good to refer you to those Acts.

CAP. LI.

Of the City of Westminster.

It hath his name of the Monastery, which Minster signifieth, and it is called Westminster in respect of the Eastminster, not far from the Tower of London.

This Westminster Sebert the first King of the East Saxons, that was Christianed, founded; and he founded also the University of Cambridge, as works and witnesses of his Christianity.

But leaving these, and others of like nature, to others, not lying properly in my way; let us turn our eye to such particular jurisdiction as within this City is exercised. For the better understanding whereof, it is to be known that within this City there are Twelve several Wards, out of which there are elected one Burgeses and one Assistant in every several Ward; and out of these twelve, two are elected yearly in the Thursday in the Easter week for Chief Burgeses to continue for one whole year following. To these Burgeses authority is given by Act of Parliament in the 27 year of the Reign of Queen Eliz. (not printed) to hear, examine, determine, and punish according to the Laws of the Realm and lawful customs of the City of London, matters of incontinency, common scolds, Innates, and common annoyances, and likewise to commit such persons as shall offend against the peace, and thereof to give knowledge within 24 hours to some Justice of Peace within the County of Midd.

One thing concerning this ancient Monastery is observable, that after the High Court of Parliament was divided into two several houses (whereof we have said somewhat in the Chapter of the High Court of Parliament) the accustomed place of that thrice worthy Assembly of the Knights, Citizens, and Burgeses of Parliament (when the Parliament was holden in Westminster) was in the Chapter house of the Abbot of Westminster, there to debate and consult De arduis & urgentibus negotiis regni, & Statutum regni & Ecclesie Anglicane concernentibus, &c. And this continued until the Statute of 1 E. 6. c. 14. which gave to the King Colleges, free Chappels, Chauntries, and whereby the King enjoyed the ancient and beautiful free Chappel of S. Stephens, founded by King Stephen, (which had Lands and Revenues of the old yearly value, of 1085 l. 10 s. 5 d.) Since which time the Chappel thereof hath served for the House of Commons when Parliaments have been holden at Westminster.

Radulphus de Ingham Chief Justice of England, (a very poor man being fined before him at 13 s. 4 d.) in another Term, moved with pity, caused the Record to be raised and made 6 s. 8 d. for which he (for his fine) made the Clock (to be heard into Westminster Hall) and the Clockhouse in Westminster, which cost him 800 marks, and continueth unto this day, which sum was entered into the Roll. And almost in the like case in the Reign of Queen Elizabeth, Sir Robert Catlyn Chief Justice of England would have had Justice Southcote (one of his companions Justice of the Kings Bench) to have altered a Record, which the Justice denied to do, and said openly in Court, that he meant not to build a Clockhouse.

This Monastery in Anno 30 H. 8. was surrendered to the King, who erected thereof a Dean and Chapter. Anno 33 H. 8. it was raised to a Bishoprick, and Thomas Thurlby made thereof the first and last Bishop, &c. Queen Eliz. made it a Colledge consisting of a Dean, twelve Prebends, a Scholmaster, an Alker, 40 Schollars, and 12 Almshouses, and so it was named the Collegiate Church of Westminster.

In Anno 37 H. 8. the Kings Pannor of Westminster was made an Honor.

Sebert began his Reign Anno Domini 603.

This Act was at the first but a probationer, but is continued to this day.

See before in the Chapter of the High Court of Parliament.

Rot. Parl. Anno

50 E. 3. an. 8.

Tempore E. 1. Vid. 2 R. 3. f. 10. a.

37 H. 8. cap. 12.

CAP. LII.

Of the City of Norwich, &c.

In the book of
Domesday made
by William the
Conqueror.

When this City there was in the Reign of King Edward the Confessor, 1300 Citizens, and then this City paid to the King 20 l. and to the Earl 10 l. And besides these 20 s. and Four Prebendaries and Six Sextaries of honey, a Bear, and six Dogs to bait him. Now it yieldeth 70 l. to the King, and a 100 s. to the Queen, and a Palfrey, and twenty pound of white rent to the Earl, &c.

The foundation of the Incorporation of this City is very ancient, for in ancient Manuscripts it appeareth, that In tempore Steph. Regis de nova fundata & ut Villa populata communitas fact³.

Camden in Bri-
tannia.

* Urbinitas ab
urbe.

* Alex. Nevill.

a This Monastery
was founded by
King Kante, and
increased by Edw.
the Confessor and
the Monastery
made of that
strength as it se-
med to be potius
castrum quam clau-
strum. It was of
the order of S.
Benedict of black
Monks.

b Stat. de 27 H. 8.
concerning the Bi-
shoprick of Nor-
wich.

c The like is not
in England.

This City is highly commended for many things, for it is truly said of it, Quod suis opibus, frequentia, ædificiorum elegantia, Templorum pulchritudine & numero, (Parceias enim plus minus 30. complectitur) Civium sedulitate, in principem fide, in * exteris humanitate, inter celeberrimas Britannia urbes merito connumera, &c. Mœnibus validis (in quibus crebræ dispositæ turres, & undecim Portæ) undique obsepta, nisi ad Ortum qua flumen (cum sinuoso flexu 4. Pontibus pervium Septentrionalem urbis partem interlucrit) profundo alveo & præcipitibus ripis defendit. * It is preferred before all the Cities in England, except London. It hath above 30 Parishes, and is as large within the Walls as London. It had within it and the Liberties Six Religious houses, and one Hospital.

For the better establishing of the Ecclesiastical Jurisdiction belonging to the Bishop of Norwich (of which Jurisdiction in general we are to treat hereafter) it shall not be impertinent to set down the true state of this Bishoprick.

In Anno 27 H. 8. and before William Rugge Doctor of Divinity of the University of Cambridge was Abbot of the a Monastery of S. Bennets de Halmie in the County of Norf. and the Bishoprick of Norwich becoming void by the death of Richard Nick commonly called the blind Bishop, the King nominated the said Abbot to the Bishop of Norwich. And afterwards the 4. of Febr. Anno 27 H. 8.

b It was (amongst other things) enacted by Authority of Parliament, That such person as should be elected and consecrated Bishop of the said See should have and enjoy to him and his successors Bishops of the said Bishoprick of Norwich united and knit to the said Bishoprick the Monastery of S. Bennets, and all and singular Mannors, Lands, Tenements, &c. belonging to the said Monastery, &c. And that the person which should be named Bishop of Norwich, and his Successors Bishops of the same Bishoprick from thenceforth, should be Abbots of the Monastery of S. Bennets, and have the dignities of the said Abbey united, incorporated, and knit to the See of the said Bishop, &c.

See before in the
Chapt. of the Roy-
al Franchise of Ely,
that King H. 1. of
the Monastery of
Ely made a Bishop-
rick, but King H. 1.
had therein one
end, and King H. 8.
another.

But peruse the Statute, and you shall find that Doctor Rugge had Beneficium vicatum, for the Bishoprick lost much more by that Act then it gained. And afterwards this Doctor was elected and consecrated Bishop of Norwich: And being Patron, in the right of his Bishoprick, of the Hospital of S. Giles in Norwich, he as Patron, and Nich. Shaxton Master of the said Hospital by their deed acknowledged and enrolled, bearing date 6 Martii Anno 1 E. 6. did give and grant to King E. 6. his heirs and successors, the said Hospital and the possessions and hereditaments belonging to the same, and all other their possessions and hereditaments

hereditaments in the said County of Norf. Certain Concealors (Templosum helluones) by pretext and colour of the said general words passed the possessions and hereditaments of the said Monastery of S. Bennets de Hulmo in a book of concealments under certain obscure words) which appear in the Act of Parliament hereafter mentioned) by Letters Patents of concealment bearing date the 2 day of August, An. 27 El. and Will. Redmain Doctor of Divinity, and Bishop of Norwich caused one Hamond a friend of his to take an estate to him and his heirs of and from the said Concealors of all or the greatest part of the said Monastery: which I (being then her Majesties Atturney General) understanding, and utterly misliking the proceeding herein, conferred with the said Bishop about the same, and in the end he was brought to agree, that an Act of Parliament should pass for the establishment of the said Bishoprick and of the possessions thereof, which Act (whereof I was well acquainted) passed at the Parliament holden in An. 39 El. and is in print, which you may read at large, where in you shall observe the fraud and falshood of the Concealors.

39 El. cap. 22.

What attempts these Concealors (graceless and wicked men) made to the subversion of the Deanery and Chapter of the Cathedral Church of Norwich, you may read in the Third book of my Reports. 73. Sed (savente Deo & auspice Christo) isti helluones non pravaluerunt. Which I have the rather remembered both for the establishment of the said Bishoprick, as for the repose and quiet of very many Fermoys, Officers, and other persons claiming interests in the said possessions in my native Country.

Lib. 3. fo. 73. the case of the Dean and Chapter of Norwich.

And if any question shall hereafter be made either concerning any of the possessions of this Bishoprick, or any other, or of any Dean and Chapter, or of the Colleges in either of the Universities, &c. by any Concealor or other; their possessions are established by the Act of Parliament of 21 Jac. cap. 2. intitled, An Act for the general quiet of the subject against all pretence of concealment whatsoever.

21 Jac. cap. 2.

For the Court of Justice within this City (which is our principal aim) we have treated of the like before in the City of London. To this we will add an Act of Parliament concerning the jurisdiction of this City (whereof we have not found the like that we remember in any other); which in effect is as followeth.

It is enacted for the Citizens of *Norwich*, that if their Customs and Usages, heretofore used, or hereafter to be used, be difficult or defective in part or in all, or that the same need any due amendment for any matter arising, whereof remedy was not aforetime had, that then the * Bailiffs and 24 Citizens of the same City, so therefore yearly to be chosen, or the greater part of them, shall from henceforth have power to ordain and provide from time to time such remedies which are most agreeable to faith and reason, and for the most profit, the good and peaceable government of the same Town, and of strangers thereto repairing, as to them shall seem best, so as such Ordinances be profitable for the King and his people.

Par. 2 R. 2. nu. 39; not in print. * It hath now a Mayor and 24 Aldermen. Vide Rot. Cart. Anno 4 H. 4.

It is a County of it self, and hath two Sheriffs and large liberties without the walls. See the Statute of 33 H. 6. c. 7. how many Attornies should be in this City. See before in the Chapter of the High Court of Parliament concerning new Draperies, &c. and Worsteads &c. made in this City. See Rot. Parl. 18 E. 1. fol. 5. concerning the ancient liberties of this City.

33 H. 6. cap. 7.

* Burgi & Civitates fundat & edificat sunt ad tuitionem gentium, & populorum Regni, & idcirco observari debent cum omni libertate, integritate & ratione.

* Int. Leges Wil. Conq. Lam. 125. Int. Leges Ethelstani & Canuti fo. 62. & 106. Oppida instantur, &c.

* 14 H. 4. It is enacted, that the Merchants and Artificers of *Worsteads* in *Norfolk* may sell their single *Worsteads* to any place or persons being of the Kings amity notwithstanding any Inhibition or Liberty to the contrary.

* Par. 14 H. 4. nu. 47. not in print.

De

Rot. Par. 11 H. 4.
nu. 48.
Trin. 13 E. 1. in
Banco Rot. 76.

He that desires the terms, true makings, and quantities of *Mossheads*:
Let him read the Statute of 11 H. 4. Rot. Parl. nu. 48.

Trin. 13 E. 1. in Banco, Rot. 76. *Inpeximus Cart. H. 3. Civibus Norwic' de liber-
tatibus concess'*.

The beautiful Cathedral or Mother Church of Norwich was begun to be
built by Herbert Bishop of Norwich. Anno 9 Willielmi Rufi.

19 E. 3. jurisd. 22.
26 H. 8. cap. 3.

The Bishops of this See had the first fruits of Ecclesiastical Livings within
their Dioceses before the Statute of 26 H. 8. c. 3. which no Bishop, or Archbishop
of this Realm had.

It hath also a famous River abounding with Fish, especially the *Pearch*.

The strong and noble Castle of Norwich called *Blanchflower* environed a-
bout with the City, but no part thereof but of the County of Norf. was not (as
some suppose) built by Bigot Earl of Norf. which some upon view thereof have
conjectured, for that the Arms of Earl Bigot are graven on the Walls thereof.
For we find a Charter of King Stephen in these words. *Stephanus Rex Anglo-
rum Archiepiscopis, Episcopis, Abbat, Justic', Comitibus, Baronibus, Vicecomitibus,
Ministris, & omnibus fidelibus suis Angliæ, Salutem. Sciatis me dedisse in feodo &
hereditate * Willielmo Comiti Warren filio meo Castellum Norwici cum toto
Burgo, &c.*

* This William
married Isabel
daughter and heir
of William Earl
Warren, and in
her right was Earl
Warren. Vid. Mat.
Par. pag. 92.

And Rafe de Waet Earl of Norwich defended this Castle of Norwich against
William the Conqueror, who was driven out of England, and travelled with his
wife to Jerusalem.

But true it is that Earl Bigot being after owner thereof, did both repair and
enlarge the same, and set his Arms upon the walls thereof. And so much for
the Antiquity (a great Ornament of this City) of this Castle, which now for
want of reparation is ready to fall.

To conclude, This famous and free City is justly to be commended for profes-
sion of true Religion, their Loyalty to their Prince in all times of tumult, the
good government of themselves, and the exercise of works of Charity.

This is the chief City of my Native Country.

Nescio qua natale solum dulcedine, cunctos

Ducit, & immemores non finit esse sui.

CAP. LIII.

The Court of the Tourne.

WE have spoken of this Court (being a Court of Record) in the Second part of the Institutes, Mag. Cart. c. 35. whereunto we will add a Charter of William the Conqueror, which we find enrolled 2 R. 2. c. 15. pro Decano & capitulo Ecclesie beate Mariæ de Lincoln.

Willielmus gratia Dei Rex Anglorum, Comitibus, Vicecomitibus, & omnibus Francigenis, & qui in Episcopatu * Remigii Episcopi terras habent, Salutem. Sciatis vos omnes, & ceteri mei fideles qui in Anglia manent, quod Episcopales leges quæ non bene, nec secundum sanctorum Canonum præcepta usque ad mea tempora in Regno Anglorum fuerunt, communi Concilio & Concilio Archiepiscoporum meorum & ceterorum Episcoporum & Abbatum & omnium Principum Regni mei emendandas judicavi. Propterea mando, & regia autoritate præcipio, ut nullus Episcopus vel Archidiaconus de legibus Episcopalibus amplius in * Hundretto Placita teneant, nec causam quæ ad regimen animarum pertinet ad iudicium secularium hominum adducant, sed quicumque secundum Episcopales leges de quacunque causa vel culpa interpellatus fuerit, ad locum quem ad hoc Episcopus elegerit, & nominaverit, veniat, ibique de causa sua respondeat, & non secundum * Hundrettum, sed secundum Canones & Episcopales leges rectum Deo & Episcopo suo faciat. Si vero aliquis per superbiam elatus ad Justitiam Episcopalem venire non voluerit, vocetur semel, & secundo, & tertio; quod si nec sic ad emendationem venerit, excommunicetur: & si opus fuerit, ad hoc vindicandus, fortitudo, & Justitia Regis vel Vicecomitis adhibeatur: Ille autem qui vocatus ad Justitiam Episcopi venire noluit, pro unaquaque vocatione legem Episcopalem emendabit: hoc etiam defendo, & mea autoritate interdico, ne ullus Vicecomis aut præpositus, aut minister Regis, nec aliquis laicus homo de legibus quæ ad Episcopum pertinent se intromittat: nec aliquis laicus homo alium hominem sine Justitia Episcopi ad iudicium adducat: Iudicium vero in nullo loco portetur nisi in Episcopali sede, aut in illo loco quem ad hoc Episcopus constituerit.

For the confirmation of this Charter, see in the Register of the Bishop of London. Willielmus Dei gratia Rex Anglorum R. Bainardo, & S. de magna Villa, P. de Vabines, ceterisque meis fidelibus de Essex & de Hertfordshire, & de Middlesex, Salutem. Sciatis vos omnes, &c. Tenor istius Cartæ est in Anglico de verbo in verbum in eadem Carta. Consimilis Carta ut ante ex libro Cartarum Archiepiscopi Cantuar'. Against this Charter it is objected. First, The time of the enrolling thereof, viz. in 2 R. 2. being never heard of before. Secondly, Out of the red book, Inter leges H. 1. cap. 8. de generalibus Placitis Comitatum, i. as well of the Tourn, as of the County Court.

a Sicut antiqua fuerit institutione firmatum, salutari Regis imperio, vera nuper est b recordatione firmatum, generalia Comitatum Placita certis locis & vicibus & definito tempore per singulas Angliæ provincias convenire debere, nec ullis ultra fatigationibus agitari, nisi propria Regis necessitas, vel commune Regni commodum sapius adjiciant. Interfint autem Episcopi, * Comites, Vicedomini, Vicarii, Centenarii, Aldermanni, præfecti, præpositi, Barones, Vavassores, Tun-

2. part of the last. Mag. Cart. Cap. 35. 12 H. 7. 18. 19. Rot. Pat. 2 R. 2. nu. 5.

* This Remigius was the first Bishop of Lincoln; the See being removed from Dorchester to Lincoln.

* i. In Turno.

* This is not intended of the Hundred Court but that in those times the Sheriff did hold his Tourn per Hundreda. See Mag. Cart. cap. 35. and the Exposition thereupon.

a Lib. rubeus in Custodia Remen. Regis compositus tempore H. 1. c. 8. Read the whole Chapter. Vide ib. Cap. 12.

b Int. Leges Edw. Lamb. 135. Vid. Stat. de Marlbr. cap. 10.

grevii

a Ecclesiastical
causes.
b Pleas of the
Crown in the
Tourn.
c Private causes in
the County Court.

grevii & ceteri terrarum Domini diligenter intendentes ne malorum impunitas, aut Gravionum pravitas, vel iudicium subversio solita miseros laceratione confiniant. Agantur itaque primo debita veræ a Christianitatis jura; Secundo b Regis placita; Postremo c causæ singulorum dignis satisfactionibus expleantur. **Whereupon they conclude, that Ecclesiastical causes were handled in the Tourn in the Reign of H.1. long after the said supposed Charter. And certain it is that the Bishops Consistories were erected, and causes Ecclesiastical removed from the Tourn to the Consistory after the making of the said Red Book: Ideo penes Lectorem sit iudicium.**

d Turnum as it is
here taken.
e And so is the
Turn holden to
this day. Mag.
Cart. 35.
f And so is the
County Court
holden at this day
Mag. Cart. 35.
g 2 E. 6. 25.
h 22 E. 4. 22.
i 2. part of the
Inst. Mag. Cart.
esp. 17.

In the same Chapter of the said Red Book it is further said, Et quoscunque d Shirefgemote discordantes inveniet, vel amore congreget, vel sequestret iudicio: debet enim Shirefgemot e bis, hundreda & wapentachia f duodécies in anno congregari.

The Tourn is a Court of Record holden before the Sheriff: the ancient Institution thereof was before Magna Carta g to hear and determine all felonies (death of man excepted) and common nuisance. h See the Statute of Magna Carta, cap. 17. and the Exposition upon the same in the Second part of the Institutes.

The stile of this Court is Curia visus Franc. Domini Regis apud B. Coram Vicecomite in Turno suo, &c. and not Turnum Vicecomitis, &c. for Turnum est nisi perambulatio. The Articles inquirable in the Tourn are known, and need not to be here rehearsed.

CAP. LIV.

The Court of the Leet or view of Frank-pledge.

This is a Court of Record, and at the first derived and taken out of the Tourn, and is holden before the Steward, and he is Judge thereof. Of the Antiquity and Jurisdiction of this Court, you shall read in the Second part of the Institutes, Magna Carta cap.35. And what the ancient Jurisdiction of the Leet was, you shall also read in the Second part of the Institutes, Magna Carta cap.17.

See Mich. 7 E.1.
Rot.9.Northamp.
Abbas de Burgo.
See the 2 part of
the Inst. Mag.
Cart.cap.35.

Leet, Leth, or Leet is a Saxon word, and cometh of the Verb zelapian or zelepian (z being added Euphonia gratia) i. convenire, to assemble together, unde conventus.

Int' leges Edw.
cap.35.

If a common Pleas, &c. done within the jurisdiction of the Leet be not presented in the Leet, the Sheriff in his Tourn cannot enquire of it, for that which is within the precinct of the Leet is exempt from the Tourn, otherwise there might be a double charge; but in that case a Writ may be directed to the Sheriff to enquire thereof, &c. against the opinion of Fineux in 12 H.7. if his opinion be not misreported. And by the book of 29 E.3. This Writ is not taken away by the Statute of 28 E.3. ca.9. made the year before, which was then fresh in the Judges memory.

29 E.3.21. Wilby.
12 H.7.18.

See the Second part of the Institutes, in the Exposition upon the Statute of 31 El. cap.7. concerning Cottages and Inmates, Special matter concerning the Jurisdiction of the Leet. See for the Jurisdiction of the Leet the Statute of 2 E.6. cap.10. concerning making of Wilt.

The Commons petitioned that excessive fines set on the Kings subjects by such as have Leets may be redressed, whereunto the King answered, The King would the same.

Rot.Par. 17 E.3.
nu.38.

See a notable case concerning the Jurisdiction of the Leet and Court Baron, Mich. 18 E. 1. in Banco Rot. 156. Norf. Et ibi tenetur quod Clericus ad Letam venire non habet necesse, nisi ejus presentia ex certis causis & considerationibus sit necessaria.

Mich.18 E.1. in
Banco Rot.156.
Norf.

This Court of the Leet may enquire of corrupt Victual as a common nuisance, whereof some have doubted, both for that it is omitted in the Statute of the Leet, and of the weak authority of the book of 9 H.6. where Martyn saith, That it is ordained that none should sell corrupt Victual. And Cottishore held opinion that it is Actio popularis, whereupon it is collected, that the nuisance thereof belongs to the Leet. *a* And Martyn and Neal 11 H.4. agreeing with him said truly, for by the *b* Statute of 51 H.3. Stat Pillor & Tumbrel, & Allis' Panis & Cervis, and by the Statute made in the Reign of E. 1. intituled, Stat. de Pistoribus & Brastatoribus & aliis Vitellariis, It is ordained that none shall sell corrupt Victuals. And by the *c* Statute of 14 E. 3. it appeareth that this Act was ordained in the time of his Grandfather, which was E.1.

Stat. de visu France
18 E.2.
9 H.6.33.b.

a Vid.11 E.4.6.b.
per Neal & Brian.
1 R.3.1.a.
7 H.4.14.15.
Brook tit. Leet r.
b In the Statute at
large p. 17. Mag.
Cart.part 2.23.24.
c 14 E.3. cap.12.
d Britton f.77.a.

d Britton who wrote after the Statute of 51 H. 3. and following the same saith thus; Puis soit inquis de ceux queux achatent per un manner de mesure & vendent per meinder mesure faux, & ceux sont punies, come vendors des vines, & auxi ceux que ferront attaints de faux aunes, & faux poys, Et auxi les * Macegrievs, & les gents que de usage vendent a trespassants mauvasse vians corruppus & wacrus, & autrement perillous a la sauntie de home. Et les Forestallers, &c. Et fo.33. he doth conclude the like passage with these words, Enconter le forme de nous Statutes.

* Macegrievs, a
Butcher or Victu-
aller.

Fleta lib. 2. cap. 1.
§. Est etiam.
Et cap. 11. §. Item
si dominus.

Est etiam atrox injuria quæ perpetuam inducit infamiam cum poena Pillorali & Tumbrelli, quæ quandoque fit per Pistores, Brasiares, & alios qui falsis ponderibus utuntur & mensuris, quæ etiam fit per cibaria corrupta, & semicotta vendentes, &c. But none of these Statutes gave the consance to surbey and correct Victuallers for corrupt Victual to our Court of the Leet, therefore further Authority therein is desired. Wherein we will produce that which is omni exceptione majus, and that is by resolution in Parliament.

12 E. 4. ca. 8.

Nota.

By the Statute of 12 E. 4. cap. 8. it is rehearsed, That Mayors, Bailiffs, and other like Governors of every City, Borough, and Town of substance within this Realm of England, for the most part have Courts of Leets and Views of frankpledge holden yearly within the same, and surveying of all Victuallers there, and correction and punishment of the offenders, and breakers of the Assise of the same, to be presented and amerced if default be found in the said Courts, &c. And where divers persons intending their singular avail and profit, and to oppress the said Victuallers, and to enter and break the liberty of divers places in this Realm having Franchises (*that is, Leets aforementioned*) and surveying of all Victuallers, and correction of the same, had purchased Letters Patents of King E. 4. to be surveyors and correctors of all such Victuallers within divers Cities, Boroughs, and other places, of Ale, a Beer, Wine, and other Victuals, &c. in *b* wrongful derogation of the Liberties and Franchises of the said Cities, Boroughs, and other places, &c. *as by the said Act is rehearsed*. It is established and ordained, that all Letters Patents granted by that King, or after to be obtained of any office of searching or surveying of Wine, Ale, Beer, or other Victual, shall be utterly void and of none effect. And that no person other then such Governors before rehearsed, &c. (*that is, in respect of their before rehearsed Leets*) shall use or exercise any such office, &c. And besides the declaration of the same to be void and against Law, a penalty of 40 l. is inflicted upon such as shall exercise any such office so obtained or after to be obtained. An excellent Act of Parliament both for the declaration of the Law in the case abovesaid, as also that the King by his Letters Patents cannot make any new office for the surveying, correction, &c. of any thing which belong to the Jurisdiction and Consuance of any former Court which by consequent hath a large extent, and therefore we have cited the same the more at large.

a These words follow after in the Act, and Nota by this it appeareth, that Beer is not of such late time as some suppose. See also Rot. Par. Anno 4 H. 4. nu. 53 Beer and Ale mentioned to be then in Calice. Beer is a Saxon word *Bier*, and Beer is within the word *cervisia* in the ancient Statutes. For it is but as the putting of a new Button to an old Coat, *viz.* Hops to Malt and Water, to make it continue the longer. *b* Hereby it appeareth that those Letters Patents were against Law, and that this is a Statute declaratory with addition of a penalty.

Some do hold that it is within the Statute of 18 E. 2. some say as an incident to the Assise of Bread and Ale, & others hold that by that Act power is given to the Lord of the Leet to enquire of that Assise of Bread and Ale, that is to say, of the Statute intituled, The Assise of Bread and Ale, which is the said Act of 51 H. 3. in which Act sellers of corrupt Victuals are to be punished. And herewith (*say they*) agreeth the book in 1 R. 3. fo. 1. that of corrupt Victual the Leet had Jurisdiction by the Statute, howsoever that is conceived, it is the Leet that hath consuance thereof.

Pasch. 18 E. 2.
Coram Rege Rot.
76. South.

And albeit Malt, Brasium, be no Victual of it self, as it is adjudged in Anno 18 E. 2. Quod venditio brasii non est venditio Victualium, nec debet puniri sicut venditio Panis, Vini & Cervisie, & hujusmodi contra formam Statut. Yet because it is the principal ingredient of Beer, and serveth to Victual the Kings Household, &c. (as it is said in the Statute of 17 R. 2.) and tenderth, if it be corrupt and not wholesome, to the great hinderance of health and increase of diseases, we will examine how the Law tenderth therein at this day.

17 R. 2. cap. 4.

Meat

Meale or Malt is a Saxon word, in Latin we call it *Brasium* derived of *brasso*, i. *ebullio, ferveo*. In the ancient Statutes *Brasiator* is taken for a Brewer. In *Fleta*, ubi *supra*, *Brasiatrix*: in Britton, ubi *supra*, *Braceresses*, for Brewers. In Latin we use the word *Pandoxator* or *Potifex*: and *Brasiator* at this day is used for a Maltmaker or Malster.

Malt is made of Barley, and cannot be well and perfectly made, unless it hath the time of 12 days in the making thereof, and both the making thereof in the Fat, floor, steeping, and sufficient drying of the said Malt 3 weeks at the least, ^{2 E. 6. cap. 10.} except it be in the months of June, July, and August, and in those months by the space of 17 days at the least.

The Maltmaker ought not slackly and deceitfully dry the Malt, to the intent to have an inordinate increase thereof by swelling of the same, which being not sufficiently dried, within a short time will be musty and full of * *Wivels*.

* *Gurguliones*.
17 R. 2. cap. 4.

No person ought to put to sale any Malt which shall not be well and sufficiently trodden, rubbed, and well fanned, whereby they may be conveniently fanned out of one Quarter thereof half a peck of dust, or more.

No person shall mingle any Malt not being well and sufficiently made, or being made of mow-burnt or spired Barley, with other good Malt, and after put the same to sale. All these be mala in se, and punishable by the Common Law. ^{2 E. 6. cap. 10.}

And this Statute of 2 E. 6. hath added a penalty, if the suit be brought upon this Statute. And if the Brewer put to sale any beer, which he hath brewed with unlawful (as all is unlawful that have not the qualities foresaid) and unwholesome Malt, he may be presented for the same in the Leet, &c. as selling of corrupt and unwholesome victual. And by this Statute power is given that the Justices of peace in every of their Sessions, and also the Steward in every Leet shall hear and determine, as well by presentment of 12 men, as by accusation or information of two honest witnesses of, for, and upon all and every the offences and forfeitures in that Act, &c. So as the Justices of peace or Stewards in Leets, may either proceed at the Common Law or upon this Statute. It is further provided by this Act, that the Bailiffs and Constables of every Borough, and Market town or other Town where Malt shall be made or put to sell, shall from time to time search and survey the same; and if the same be found to be evil made or mingled with evil Malt, they by the advice of one Justice of peace shall cause the same to be sold at such reasonable price, and under the common price in the market, as to his discretion shall seem expedient. This Act extends not to the making of any Malt for a mans own provision for his own house or family. And the offences against this Act are to be presented within a year. ^{2 E. 6. cap. 10.}

This Act of 2 E. 6. cap. 10. is continued, and yet standeth in force. 27 Eliz. cap. 4. 1 Jac. cap. 25. &c. 4 Car. cap. 4.

That which hath been said (*de malis in se*) of Malt, may also be applied to Hops another ingredient in Beer, and punishable by the Common Law. But against divers and many falsehoods practised in packing of foreign Hops, for that the subjects of the Realm have been by reason thereof of late years abused and deceived unto the value of 20 thousand pounds yearly at the least (for that in sacks of foreign Hops there is not found one third part to be good and clean Hops, the rest being dross and soil.) A good Law is made Anno 1 Jac. and every person offending therein shall forfeit the same Hops so brought into the Realm. And it is further enacted by the same Act, that if any brewer of Beer or Ale shall employ and spend any Hops unclean, corrupt, or mixt with any powder, dust, dross, sand, or any other soil whatsoever, he shall forfeit the value of those Hops so employed, to be recovered, &c. in any of the Kings Courts of Record. ^{1 Jac. cap. 18.}

The reason wherefore these Courts of the Tourn and Leet are Courts of Record, and not the Courts of the County, of the Hundred, and of the Court Baron (whereof we shall next in order treat) is, for that the Tourn and the Leet are instituted for the Common-weal, as for conservation of the Kings peace, and punishment of common nuisances &c. And for conservation of the peace, the Sherif in the Tourn, and the Steward in the Leet may take Recognisances for

keeping of the peace. But the said inferiour Courts of the County Hundred, and the Court Baron have Jurisdiction of private causes under the value of 40s. between party and party.

---Fuit hæc sapientia quondam

Publica privatis secernere, sacra profanis.

And forasmuch as unclean, corrupted, and mingled Spices and Drugs be so unwholsome and hurtful, as they tend to the jeopardy of mans body, we will hereunto add the exposition of the Statute of 1 Jac. cap. 19. the penalty of Spices not garbled.

¶ Whereas heretofore great deceits and abuses have been committed in uttering, selling, and putting to sale fundry sorts of unclean, corrupt and mingled Spices, &c. garbleable: to the jeopardy of his Majesties person, &c.

¶ Garbleable.] To garble, signifieth in our legal understanding, to sever and divide the good and sufficient from the bad and insufficient; and extendeth not only to Spices and Drugs mentioned in our Statute, but to other wares and merchandizes. As for example. By the Statute of 1 R. 3. it is provided that no Bowstaves shall be sold ungarbled, &c. that is, until the good and sufficient be severed and divided from the bad and insufficient: and this garbling of Bows hath reference to the Statute of 12 E. 4. cap. 2. where garbling of Bows is well expounded, that is, that the Bowstaves be searched and surveyed, &c. and that such as be not good and sufficient be marked &c. Some think that it is derived from the French Verb, Garber, to make fine, neat, clean, &c. Others fetch it from Cribler and that of Cribrare to sift or sever the good from the bad, unde Cribrum, sic dictum, quia crebris pertusum est foraminibus ad res purgandas à pulvere & immundis (unde Cribrarius, the Garbler) which well agreeth with our Act.

A Dive and to sift do come from the Saxons, viz. rif, rife This Act consisteth of a Preamble and a Body. In the Preamble it is rehearsed, That unclean, corrupt, and mingled Spices, Drugs, Wares, and Merchandises garbleable do tend to the jeopardy of his Majesties person, and of his subjects using the same in their meats drinks, and other needful occasions, &c.

The selling of such unclean, corrupt, and mingled Spices and Drugs used in meats and drinks, is malum in se, and (as hath been said) in divers like cases punishable by the Common Law. But this Act tendeth to the prevention of such deceits and abuses, by garbling and purifying of the same before they be sold, and by punishment if they be sold before they be garbled and purified.

All that is garbleable must be garbled and cleansed and sealed by the Garbler before sale, upon pain of forfeiture of the same or value thereof, for which an Action popular is given.

There be 32 kinds of Spices and Drugs by special name mentioned in this Act, viz.

1. Pepper. 2. Cloves. 3. Mace. 4. Nutmegs. 5. Cinnamon. 6. Ginger. 7. Long-pepper. 8. Worm-seeds.
9. Comin-seeds. 10. Any-seeds. 11. Coliander-seeds.
12. Bynny-pepper. 13. Almonds. 14. Dates. 15. Galls.
16. Spikenard. 17. Galingall. 18. Turmeric. 19. Setwell.
20. Cassia-fistula. 21. Ginny-pepper. 22. Seme.
23. Barberies. 24. Rice. 25. Erins. 26. Staveacre.
27. Calamus. 28. Fennyrick. 29. Cassia. 30. Lignum.
31. Graines. 32. Caraway-seeds.

And in general words. 1. Gums of all sorts and kinds garbleable. 2. All other Spices, Drugs, Wares and Merchandises garbleable.

¶ Be it furthermore enacted, that if any of the said Spices, Drugs, Wares, or other Merchandizes be mixed with * garbles, matter or thing whatsoever after the same be garbled, &c. That then the said Spices, Drugs, &c. or the value thereof shall be wholly forfeited.

¶ It

* Nota, Garbles signifie the dust or soil or uncleanness that is severed.

1 R. 3. cap. 11.

12 E. 4. cap. 2. the Statute appointeth who shall garble them.

It shall and may be lawful for the Garbler of Spices, &c. within the City of London and the Liberties of the same, &c.

There hath been of ancient time an Officer in London and the Liberties of the same, called the Garbler of Spices, &c. who may make his Deputies. And this Act giveth him authority at all and every time and times * in the day time to enter into any Shops, Warehouses, or Seller, to view and search such Drugs, Spices, &c. and to garble and make clean the same.

* This had been implied if it had not been expressed.

There is a Proviso, that if any Merchant or other person (other than Merchants alien, or made or to be made Denizen) shall bring any Spice, Drugs, or other Merchandizes garbleable into this Realm, and shall not offer the same to sale or sell the same within this Realm, &c. and shall transport the same *bona fide* within eight moneths (accounting 28 days to the moneth) after his first landing, &c. shall not incur any of the penalties of this Act.

And this Proviso was added in respect of a general Law made in 16 R. 2. 16 R. 2. cap. 1. that no manner of Spicery, after that it be brought into the Realm, shall be carried out of the same by Alien or Denizen, upon pain of forfeiture of the same. And this Proviso extendeth only to the natural born Subjects, and not to Merchants alien, or made or to be made Denizens.

And by the Act of 16 R. 2. cap. 1. it is enacted, that Aliens shall sell Wines by whole vessels, & Spicery by whole vessels and balls, and in no other manner.

The Court of the Leet may inquire of these offences following by authority of Parliament.

De visu franc. Articles of the Leet, to which we will add

Concerning tracing and killing of Hares.

Of Hostlers making Horsehead under the assize.

Of breeders of Horses under statute.

Of Artillery, Burs, and Fows.

Concerning shooting in Crossbows and Handguns.

Concerning Wicquallers, Artificers, Workmen and Labourers.

Against great prices and excess of Wines.

For amendment of High ways. 2 & 3 Ph. & Mar. cap. 3. 5 Eliz. 13. 18 El. 9.

Concerning Puffers.

For the preservation of the spawn and fry of Fish.

Against taking of Pheasants and Partridges.

Against the erection of Cottages and Inmates. Hereof see before in this Chapter.

By these and divers other Acts of Parliament the jurisdiction of this Court of the Leet hath been much increased, to the end that the Subject might have remedy and justice at his own doores: and therefore it is requisite that the Steward of this Court be learned in the Law, for Ignorantia Judicis est calamitas innocentis. 2 & Rot. Parl. 51 E. 3. nu. 49. concerning Taverners.

The style of this Court of the Leet is, Curia visus franc' pleg' tent' apud B. coram A. B. Seneschallo, &c.

Francus plegius Saxonice ppebopogh Freboroe, Anglice, Fræpledge.

The Constables or petty Constables are chosen by the Common Law at the Leet or Town, and are by the Common Law conservators of the peace, and may take surety of the peace by Obligation, and are as ancient as Towns or Leets be, and began not about the beginning of E. 3. as some have supposed: Vide the Chapter of the Hundred Court for the Chief Constable, & 9 E. 4. 36. 5 H. 7. 6. 11 H. 4. 12. 38 E. 3. 3.

But to say once for all: Repetition without addition is but loss of time, and altogether unprofitable.

18 E. 2. De visu franc.

14 H. 8. cap. 11.

32 H. 8. cap. 14.

32 H. 8. cap. 13.

33 H. 8. cap. 8. 9.

33 H. 8. cap. 6.

2 E. 6. cap. 15.

7 E. 7. cap. 5.

4 & 5 P. & M. c. 3.

1 Eliz. 17. 1 Jac. 25.

23 Eliz. cap. 10.

31 Eliz. cap. 7.

3 H. 4. 9. 10 E. 4. 17

44 E. 3. bar. 202.

32 E. 3. ib. 259.

46 E. 2. ib. 214.

Vide Rot. Parl.

6 E. 3. post. nu. 6.

Fitz. Just. of

Peace 172.

3 E. 3. cor. 288.

12 H. 7. 18. Fineux.

CAP. LV.

The Court of the County.

See the second
part of the Inst.
Mag. Cart. c. 35.

Lib. 6. fol. 12.
Jentlemans case.
Stat de Merton
cap. 3. 44 E. 3. 10.

2. part of the Inst.
Mag. Cart. cap. 35.
F.N.B. 119. g. h.
Ib. 85. g. & c.
& 138. b. & c.

4 Eliz. Dier 222.
15 Eliz. 317. a.

The Style of this Court is: Buck. Cura primia Comitatus E. C. Militis vicecomitis Com' prædict' tent' apud B. &c. And the next Court Curia secunda E. C. vicecom' Com' prædict' &c. And so forth.

See the Statute of W. 2. c. 36. against procurement of Suits in this Court.

This Court is no Court of Record, and the suitors are the Judges thereof. But in a Redisseisin the Sheriff is Judge by the Statute of Merton cap. 3. and a Writ of error lieth of his judgment.

Of the antiquity and jurisdiction of this Court, you shall read in the Statute of Magna Carta, c. 35. It holdeth no plea of any debt or damages to the value of 40 s. or above, nor of any trespass done vi & armis, because a fine is due thereby to the King. But of debt, detinue, trespass, and other actions personal above 40 s. the Sheriff may hold plea by force of a Writ of Justicies to him directed, for that is in nature of a Commission to him, and is Vicountel, and not retournable. And he may before any County Court award a Summons to his Wally retournable within 2 or 3 days at his discretion, to summon the defendant by his goods &c. to answer; and if the Wally retourn Nihil, and the plaintiff remove the same by a Pone into the Common Pleas, that Court shall not grant a Capias, for the nature of the Writ doth not warrant a Capias, and the Sheriff could not grant the same, neither doth the Writ of Justicies alter the nature of the Court of the County, for therein the Sheriff is not Judge, but the Suitors; and upon a Judgment given therein a Writ of false judgment doth lie, and not a Writ of error. And in divers real actions a Writ of Justicies doth lie as it appeareth in our books, as in Bre D' admesurement of dower or pasture, in Customs & services, Mesne, Quod permittat, Rationabilibus divisis, Sect' ad molend', de nuisans, de Curia claudenda, Annuity, &c.

In the County Court upon the Exigent after 5 exact', the Coroners give judgment, Ideo utlagetur per judicium Coronatorum. But by this Judgment no goods are forfeited before the Outlawry appear of Record: and that is the reason that no man can claim the goods of Outlaws by prescription. Neither shall such an Outlawry disable the party: but if upon a Certiorari to the Coroners they certify the Outlawry, this shall serve the King for the forfeiture of his goods, but shall not disable the party till the Exigent be retourned.

CAP. LVI.

The Court of the Hundred.

This is no Court of Record, and the Suitors be thereof Judges. Of the antiquity and jurisdiction hereof vide Magna Carta, ubi sup. And as the Let was derived out of the Court for the ease of the people, so this Court of the Hundred for the same cause was derived out of the Court of the County, and is a Court Baron in his nature.

2 part of the Inst.
Mag. Cart. cap. 35.
12 H. 7. 18.

By the Statute of 14 E. 3. Hundreds (except such as then were of estate in fee) are rejoyned (as to the Bailiwick of the same) to the Counties, and all grants made of the Bailiwick of Hundreds since that Statute are void, and the making of the Bailiffs thereof belong to the Sheriff, for the better execution of Justice and of his Office. And so it was resolved by the Lord Treasurer Lea and all the Barons of the Exchequer, and so decreed in the Exchequer Chamber, between Fortescue of Buckinghamshire plaintiff, and the Sheriff of the same defendant, Term 2. Caroli Regis, the plaintiff having of late divers Hundreds granted to him for life in the County of Buck, reserving a rent, which the Sheriff disallowed and put in Bailiffs of his own. And a commandment was given by the Court to the Attorney General to avoid the like in other Counties, for that they were against Law, and belonged to the office of the Sheriff, and were occasions of delays, and hinderances of Justice. See the Statute of W. 2. cap. 36. against procurement of suits in this Court.

14 E. 3. cap. 9.
4 E. 3. cap. 13.

The stile of this Court is, Curia E. C. militis hundredi sui de B. in com. Buck tent, &c. Coram A. B. Seneschallo ibidem.

If there be a Bailiff of a Liberty appointed by the Lord of the Liberty, or the Sheriffs Bailiff of any Hundred, Wapentake, or Tything, which have not Lands or Tenements sufficient in that County, there lieth a Writ De Balivo amovendo, grounded upon the Statute of 4 E. 3. cap. 9. There are Constables of the Hundred commonly called, chief Constables, so named, because Constables of Towns are called petit Constables. These Constables of Hundreds were created by the Statute of 13 E. 1. and their authority limited to five things. 1. To make the view of armoz. 2. To present before Justices assigned such defaults as they do see in the Country about armoz. 3. To present defaults of suits of Tourns. 4. Of High ways. 5. To present all such as lodge strangers in uplandish Towns, for whom they will not answer. Divers and many Acts of Parliament have given the chief Constable and petty Constable more authority and power then originally they had, which hath been well collected by others. For no Officer that is constituted by Act of Parliament hath more authority then the Act that creates him, or some subsequent Act of Parliament doth give him, for he cannot prescribe as the Officer by the Common Law may. Nota 10 E. 4. f. 17. the petit Constable was an Officer by the Common Law per Curiam, Vid. 4 E. 3. c. 3. 25 E. 3. c. 2. See in the Chapter of Hue and Cry in the Third part of the Institutes, Hue and Cry always by the Common Law made by the Constables of Towns, &c.

9 E. 2. Linc' Stat.
Unicum.
4 E. 3. cap. 9.
5 E. 3. cap. 4.
Register 178.
F. N. B. 164. b.

Stat. de 13 E. 1.
De Winch. c. 6.

Lambard, &c.
See cap. Lett for
the petty Constable.

Fleta lib. 1. cap. 2. § De Vic' & Constabulariis, &c.

CAP. LVII.

The Court Baron.

See the second
part of the Inst.
Mag. Cart. cap. 25

This is a Court incident to every Pannoz, and is not of Record, and the Suitoys be thereof Judges, although the Plea be holden by force of a Writ of right.

There is also a Customary Pannoz whereof you may read in the First part of the Institutes, Sect. 73. Verb. Court, &c.

And this was first instituted for the ease of the Tenants, and for the ending of debts and damages under 40 s. at home, as it were at their own doors.

1. part of the Inst.
Sect. 73.

See there for the antiquity and institution of this Court, and the Articles inquirable therein are usual and well known.

The stile of the Court is, Curia Baronis E. C. Militis manerii sui prædicti (having the Pannozs name written in the Margent) ten' tali die, &c. coram A. B. Seneschallo ibidem.

In the reign of E. 1. we have seen Court Rolls having the Pannozs name in the margent. Aula ibidem ten' tali die, &c. the Court of the Pannoz being so called, because it was holden in the Hall of the Pannoz: as the Court of the Marshalsea is called Curia Aulae Hospitalii Domini Regis, because of ancient time it was holden in the Kings Hall.

CAP. LVIII.

The Court of ancient Demesne.

Those Mannors are called the ancient Demesnes of the Crown which were in the hands of St. Edward the Confessor or William the Conqueror, and so expressed in the Book of Domesday, made or begun in the 14 year of William the Conqueror; for so we find it in Libro Rubro Scaccarii in Custodia Regem Regis fo. 47. quod liber vocatus Domesday compositus fuit Anno 14 Willielmi Regis Conquestoris. And Radulphus Niger Monk of Cogishall in Essex in vita Willielmi Conquestoris hath these words, Annis 1081, 1082, 1083, 1084, 1085, 1086, Rex Willielmus describi fecit omnes Barones & feudatos Milites, & quot carucatas terre quisque habebat & redditus possessionum. And Anno Domini 1081, was the 14 year of William the Conqueror; and this great and excellent survey lasted 6 years. And in Lucubrati Okham, it is worthily called Liber Judicatorius, because it is the only trial of ancient Demesne; against which, for the uncontrollable truth and verity thereof, there can be taken no averment. And therefore in that respect like the dam and judgment at Doomsday.

In Chant Archie. Cant: Sandwice in anno quo facta est hac descriptio. In Domesday it self lege librum, for hereby it appeareth that it was made in the time of the Conqueror.

All those that hold of these Mannors in Socage are Tenants in ancient Demesne; and they plowed the Kings Demesnes of his Mannors, sowed and harrowed the same, mowed and made his Meadows, and other such services of husbandry for the sustenance of the King and his honorable household, maintenance of his stable, and other like necessities pertaining to the Kings husbandry. And to the end these tenants might the better apply themselves to their labours for the profit of the King, they had six privileges. First, that they should not be impleaded for any their Lands, &c. out of the said Mannor, but have Justice administered to them at their own door by the little Writ of Right Close directed to the Bailiffs of the Kings Mannors, or to the Lord of the Mannor, if it be in the hands of a subject; and if they were impleaded out of the Mannor, they may abate the Writ. 2. They cannot be impannelled to appear at Westminster or elsewhere in any other Court upon any inquest or trial of any cause. 3. They are free and quiet from all manner of Tolls in Fairs and Markets for all things concerning husbandry and sustenance. 4. And of Tares and Tallages by Parliaments, unless they be specially named. 5. And of contribution to the expenses of the Knights of the Parliament, &c. 6. If they be severally distrained for other service, they all for saving of charges may join in a Writ of Monstraverunt, albeit they be several Tenants.

These privileges remain still, although the Mannor be come to the hands of Subjects, and although their service of the plough is for the most part altered and turned into money: Avera in Domesday Grentbrigh Rexfordham, sed tamen semper inveniat averam vel 8 d. in servicio Regis, that is, a days work of a Ploughman, or 8 d.

This Court is in nature of a Court Baron, wherein the suitors are Judges, and is no Court of Record, for Brevia Clausa Recordum non habent.

Nota, the Demendant in a Writ of Right Close cannot remove the plea out of the Court of the Lord for any cause, the Tenant may remove the same for 7 causes, viz. 1. For that beholdeth it ad Communem legem. As if a fine and recovery be levied or suffered thereof in the Court of Common pleas, this maketh the Land frank fee so long as they stand in force. 2. If the Land be not holden of the Mannor being ancient Demesne. 3. If the Land be holden by Knights

R n

service:

See the second part of the Inst. W. 1. c. 31. f. 221.

See 21 E. 3. 322. Herein Fitz. in his N.B. fo. 181. ascribing it to Edw. the Confessor, was deceived. Viz. the Preface to the third Book of my Reports.

See the second part of the Inst. Art. sup. Cart. c. 2.

The privilege of Tenants in ancient demesne.

* Regist. fo. 17 E. 3.
 44. F.N.B. 14.c.
 41 E. 3. 22.
 49 E. 3. 7.
 50 E. 3. 14.
 † Domesday. *Sept*
herciare or *herseare*
 of the French
 word [*herse*.]
 a Vid. li. 5. fo. 105.
 Allens case.
 44 E. 3. 38.
 46 E. 3. 1.
 49 E. 3. 7. 44 E. 3.
 22. 21 E. 3. 10. 32.
 40 E. 3. 4.
 28 E. 3. 95.
 34 E. 1. Anc' de-
 mesne 98. 31 E. 4.
 Anc. demesne 6.
 22 Aff. 45.
 F.N.B. 136.k.
 30 E. 3. 12.
 b 2 E. 2. Execut.
 118. 15 E. 3.
 ib. 62. 8 E. 4. ib.
 136. 7 H. 4. 19.
 Lib. 5. fo. 105.
 19 H. 6. 64.
 c 4 E. 2. Redisseisin
 9.
 d 7 H. 6. 35. 8 H. 6.
 34. 32 H. 6. 35.
 F.N.B. 189.g.
 Lib. 5. fo. 105.
 Allens case.
 22 El. Dier 373.
 7 H. 4. 11.
 e 2 E. 4. 26. 8 E. 4.
 6. 7 H. 4. 44.
 8 H. 4. 24. 17 E. 3.
 31. Trin. 16 E. 3.
 Coram Rege Rot.
 132. Eborum.
 Tr. 13 E. 3. Coram
 Rege Rot. 108.
 Glouc' (finis)
 Tr. 3 H. 5. Coram
 Rege Rot. 9. Essex
 (finis) 21 E. 3. 20.
 56. 21 Aff. 4.
 26 E. 3. 63.
 f Vid. Dier 22 El.
 373.
 g 3 E. 3. 9. F.N.B.
 19. d.
 h Dier 22 El. 373.
 27 Aff. 5. 44 E. 3.
 38.
 i 21 E. 3. 32.

service: for, as hath been said, the service of the Plow and Husbandry is the cause of the privilege. 4. * If there be no suitors, or but one suitor, for that the suitors are Judges, and therefore the Demandant must sue at the Common Law, for that there is a failure of Justice within the Mannor. 5. If the Tenant accept a release of his Lord of his seignior, or the seignior be otherwise extin- guished by reason of the seisin of the King or otherwise. 6. Or if the Lord disseise his Tenant and make a feoffment in fee. 7. If the Lord grant the ser- vices of his Tenant, and the Tenant attorn.

† Arabant & herciebant ad curiam domini. i. they did plough, and harrow at the Mannor of the Lord.

a And this privilege doth not extend to meer personal actions, as debt upon a Lease, Trepass, Quare clausum fregit, and the like, in which by common in- tendment the title of the freehold shall not come in debate. But otherwise it is of all real actions, and also in actions of Account, Replevin, Ejectione firma, Writ of Mesne and the like, where by common intendment the realty shall come in question.

b Lands in ancient demesne are extendable upon a Statute Merchant, Staple, Clegit, and regularly all general Statutes extend to ancient demesne.

c But a Redisseisin, although they concern the realty, doth not lie in ancient demesne, because the proceeding in a Redisseisin is appointed by the Statutes to be made by the Sherif, assumptis secum Coronatoribus Comitatus, &c. and in ancient demesne there are no Coroners, d but otherwise it is in an action of Waste.

And as the Tenants in ancient Demesne are careful to preserve their privi- ledges, so the Lord is as careful to preserve his seignior, and the tenure of this tenancy in ancient demesne. e And therefore if the Tenant levy a fine, or suffer a recovery in the Court of Common pleas, &c. whereby for the time the land is become frank fee, the Lord by a Writ of Disceit may not only restore himself to his true seignior, but utterly avoid the fine, and restore his Tenant against the recovery and his own fine to the Land again in his former estate: and the reason thereof is, for that the recovery or fine was not suffered or levied before a competent Judge in the right Court, which ought to have been in the Court of ancient Demesne, f and therefore after the reversal in the Writ of Disceit, it is now tanquam coram non Judice, and the parties to the fine or recovery shall be fined and imprisoned pro deceptione Curie.

g But if in a Writ of Right close in ancient Demesne, the Demandant maketh his protestation to sue in the nature of Waste of Wood, the Tenant plead in abatement of the Writ, and the Writ by Judgment is abated, the Deman- dant brings a Writ of false judgment, wherein the Writ is affirmed to be good, the Court of Common pleas shall proceed as the inferior Court should have done, and although that judgment be given to recover the Land in the Common pleas, yet the Land is not frank fee, but remains ancient Demesne, because the beginning and foundation thereof was in ancient Demesne.

h They may levy a fine in ancient Demesne which by a Custom it is said to be a bar of the estate tail: but certainly that will not hold.

i If the Tenant remove the plea for the cause mentioned in the Recordare, he may come into the Kings Court, and assign other cause, and twenty, if he hath, to maintain the Jurisdiction of the Kings Court.

CAP. LX.

Bra&I.5.f.334.2.

*The Court of Pepoudres, vulgarly Pipowders,
Curia pedis pulverisati.*

Bra&I.5.f.334.2.

6 H.4.3. 6 E.4.3.b.
7 E.4.23.
Lib.6.fo.121a.&20.
* See before Cap.
Justices in Eire,
simile pag.485.
2 Mic. 42 & 43 El.
Coram Regc.
Lib.10.f.61. En le
case del Marthallay;
Jones case.

b 7 H.6.18.19.
Kelw. 23 H.7.99.
Doct.& St. fo 11.
3 Mar. Dier 132.
Int' Hall & Pinder.
45 E.3.1. 1 H.4.6.
13 H.7.19.b.
12 H.7.16.17.
c 13 E.4.8.b. 14 E.4.10.
8 H.7.45. 12 E.4.
9. 19 H.8. Br. in-
cidents 34.
12 H.6.3.b.
d 17 E.4. c.2.
1 R.3.cap.6.

This Court is incident to every Fair and Market, as a Court Baron to a Manor, and is derived of two Latine words, as is apparent, and so called, because that for contracts and injuries done concerning the Fair or Market, there shall be as speedy justice done for advancement of Trade and Traffick, as the dust can fall from the foot, the proceeding there being de hora in horam. And therefore Bracton saith, Item propterea qui celerem debent habere justitiam, sicut sunt mercatores quibus exhibetur Justitia *Pepoudrouz*, &c.

This is a Court of Record to be holden before the Steward of the Court, and the Jurisdiction thereof consisteth in four conclusions. 1. The contract or cause of action must be in the same time of the same Fair or Market, *and not before or in a former. 2. It must be for some matter concerning the same Fair or Market, done, complained on, heard and determined. 3. It must be within the precinct of that Fair or Market. 4. The Plaintiff must take an oath according to the Statute of 17 E.4.ca.2. but that concludeth not the Defendant. 2 And all this was resolved and adjudged in a Writ of Error brought by Hall against Jones, and the case was this: Jones being Register of the Bishop of Glouc', brought an Action upon the case in a Court of Pipowders belonging to the Market in Gloucester against Hall for these words: Master Jones and his Clerks have by colour of his office extorted and gotten 300 l. per annum, by unlawful means, for many years together, above their ordinary fees, for proving of Testaments and granting Administrations. And not guilty being pleaded, &c. it was tried and adjudged for the Plaintiff; and divers errors were assigned, but the Judgment was reversed for these errors following. 1. That this Court of Pipowders, being incident to the Market, hath no Jurisdiction but of such things as concern the Market; and these slanderous words did in no sort concern the Market: but if one slander the wares of any in the Market, whereby he cannot make sale of them, an Action doth lye in that Court. 2. It appeared in the Record that the words were spoken the day before the Market; and no Action lyeth in that Court but for an injury within the Jurisdiction of the Court done, complained on, heard and determined on the same Market day, the proceeding being de hora in horam, and within the precinct of the Market. And herewith agreeth 3 Mar. Dier 132. And it was resolved that this Court was incident as well to a Market, as to a Fair. And there may be a Court of Pipowders by custom without Fair or Market, and a Market without an owner. Another error was assigned, for that it is provided by the Statutes of 17 E.4. and 1 R.3. that no plea shall be holden in the Court of Pipowders, except the Plaintiff or his Attorney will make oath, that the contract or other thing contained in the Declaration was done or committed within the time of the Fair: but this Error was disallowed by the Court, for although this ought to be done, if the Defendant will stand upon it, notwithstanding it shall not be made part of the Record.

Vide Lib. Intrat. Rast. fo. 464. Pipowder 1. fo. 18. Execution 3. fo. 158.

Capler 1.

CAP. LXI.

The Court of the Clerk of the Market.

HE is to this day called Clericus Mercati Hospitii Regis, for of ancient time there was a continual Market kept at the Court gate, where the King was better served with Viands for his household then by Purveyors, the subject better used, and the King at far less charge in respect of the multitude of Purveyors, &c. And the Officer of the Market of the Kings household retaineth his name still, although the good end thereof according to the first Institution ceaseth.

The Clerk of the Market shall hold no plea but such as were holden in the Reign of E.1. And at this day there is no great need of him, for the Justices of Assize, the Justices of Oier and Terminer, Justices of Peace, and the Sheriffs in their Tourns, and the Lords in their Leets, may and do inquire of false weights and measures.

He doth keep a Court and inquireth of weights and measures whether they be according to the Kings standard or no, and for that purpose he maketh process to Sheriffs and Bailiffs to return Pannels before him, &c. And he is to deliver the Extreams of those things which touch his office into the Exchequer.

Of Drink (that is to say) of Wine, Ale and Beer, and of Corn and Grain there ought to be but one measure: Una mensura vini, Cervisie & bladi, & Virga, and of all other merchandize per totum regnum. De ponderibus vero sicut de mensuris.

cap.3. 9 H.5. cap.8. 11 H.7. cap.4. 12 H.7. cap.5.

But notwithstanding these Statutes there be within this Realm two kind of weights, the one called Troy weight, which is commanded by the Statute, and this derived from the grain or corn of barley from the midst of the Ear and dry. 24 of these corns or grains make a penny weight, and 20 of these penny weights make an ounce, and 12 ounces make a pound Troy. A grain contains 20 minutes; a minute contains 24 droits, a droit contains 24 blanks. 12 grains of fine gold make a Carat. 24 Carats of fine gold make an ounce, and 12 ounces make a pound of fine gold. By this Troy weight are weighed according to Law pearls, precious stones, gold and silver, bread, wheat, and such like.

There is another kind of weight called Aver de pois. A pound of this consisteth of 16 ounces, every ounce having twenty penny weight, every penny weight 24 grains, and $\frac{1}{2}$ of a grain. It is called Aver de pois, because thereby they have full measure. Hereby are weighed all Physical drugs, Wax, Pitch, Tar, Iron, Steel, Lead, Hemp, Flax, Flesh, Butter, Cheese, and divers other commodities, but specially every commodity subject to waste. There was another weight called the Ancel or Ansel weight, which was when the Scales were fixed to a beam or staff, and he that weighed by it, used his forefinger or hand in the midst, wherein was great deceit, and therefore is put out by the Statute of 25 E. 3. cap. 9. 34 E. 3. cap. 5. 8 H. 6. cap. 5. It is derived ab Ansa, which is the handle of the ballance, and this weight was guided by the hand.

Measures of Troy be of three kinds, viz. of things that be dry, of Liquor, and of Longitude, latitude and profundity.

Of dry things, 4 grains make a penny weight, 20 penny weight make an ounce, 12 ounces a pound or pinte (for a pound weight is a pinte in measure)

Britton fol. 75.b.
Fleta l.2. c.20.
Rot.Par. 50 E.3.
nn.87. & 132.
13 R.2. cap. 4.
32 H.8. cap.20.
17 H.8. c.24.
Lib. Int. Co. 445.
a See the 2. part
of the Institutes,
28 E.1. Artic. sup.
Cart. cap.2. and
the Exposition
thereupon.
b Rot.Parl. 8 H.4.
nn.82.
c 16 R.2. cap.3.
d Stat. de modo
mittendi extradi
in Scaccarium.
Anno 16 E.1. &
15 E.2.
e Mag. Cart. c. 25.
27 E.3. cap.10.
25 E.3. cap.9.
24 E.3. cap.12.
13 R.2. cap.9.
15 R.2.4. 16 R.2.
1 H.5. cap.10.

¶ *Weights.*
Trutina Campana.
Ordinatio mensu-
rar' 31 E.3.

¶ *Of Measures.*

Ordinatio mensur'
31 E.1. ubi sup.

two

two pounds or pintes make a quart, two quarts make a pottle, two pottles make a gallon, two gallons make a peck, four pecks make a bushel, four bushels make a comb, two combs make a quarter, six quarters make a wey, and ten quarters make a last,

C Of Liquor 12 ounces make a pound, 8 pound make a gallon of wine, 8 gallons of wine make a Bushel of London, which is the 8 part of a Quarter.

Of wine see the Statutes of 1 R. 3. cap. 13. 28 H. 8. cap. 14.

See Assisa Panis & Cervisia.
51 H. 3.

Of Ale and Beer

the Ferkin 8
the Halberkin 16
the Barrel 32
the Hogshead 63
or Quarter }

Gallons.

Et sic de ceteris.

Vet. Mag. Cart. f. 31
32. 2 part.

Ibidem 44. b.
Compositio ulnarum & perticarum
Vet. Mag. Cart.
2 part. 45, 46.
An. 31 E. 1. Statut.
de terris mensur.

See the Statute Compositio de Ponderibus.

Statut de Pistoribus, Vet. Mag. Cart. 2 parte 23, 24.

Statut Panis & Cervisia.

C Of Longitude, Latitude, and profundity. 3 grains of barley in length make an inch, 12 Inches make a foot, 3 foot make a yard, a yard and a quarter make an ell, 5 yards and a half make a perche, 40 perches in length make a furlong, 8 furlongs make a mile.

I may speak of the sellers by the weight of Aver de poys, as Tacitus spake of the Augures in Rome. Hoc genus hominum semper vitabitur, & semper in Civitate retinebitur.

W. 1. An. 3 E. 1.
cap. 26.

But now let us see what fees the Clerk of the Market ought to take. By the Statute of W. 1. cap. 26. it is enacted that no Sheriff or other Minister of the King shall take any reward for doing his office, &c. And the Kings Clerk of the Market is the Kings Minister, and therefore he is within the purview of this Statute.

Rot. Par. 8 R. 2.
m. 11.

I find that in 8 R. 2. in open Parliament a Groat was allowed to him for marking and sealing of every bushel, 2 d. of every half bushel, 1 d. of every peck, and so according to that rate.

7 H. 7. cap. 3.
11 H. 4. cap. 4.

By the Statute of 7 H. 7. the chief Officer of every City and Borough shall take for sealing of every bushel a penny, of every other measure a half penny, of every hundred weight 1 d. and of every half hundred ob. and of every weight under a farthing, and not above.

13 R. 2. cap. 4.
38 Ass. p. 11.

The Clerk of the Market in the reign of N. Eliz. claimed by custom for the examination and view of every bushel sealed before by the Clerk of the Market, whether it were lawful or unlawful 2 d. and in like manner of every lesser measure of wood 1 d. and in like manner of Inholders measures 4 d. and of the measures of Victuallers 2 d. and divers other fees for examination and viewing of weights and measures whether they were lawful or unlawful, as is aforesaid. And it was resolved by all the Judges of England, that no fee was due to the Clerk of the Market for view and examination only of weights and measures for these causes. 1. The said Parliament Roll of 8 R. 2. alloweth a fee for sealing, and so doth 7 H. 7. and 11 H. 7. but no allowance for view or examination. 2. The weights and measures are either true, according as before they were sealed, or false: if true, it should be against reason to charge the innocent, for that were disperdere justum cum impio; if false, then by the Statute of 13 R. 2. they ought to be burnt, and the end of the view and examination is to find out falsehood, to the end they might be punished, and fined to the King, as appeareth by the Statute of 13 R. 2. but no fee is to be taken therefore. 3. Whereas the Clerk of the Market affirmed, that these fees had been of long time taken, the Judges said, that malus usus abolendus est, and the taking of fees for view and examination only was extortion, and that they could not prescribe against the said Statute of W. 1. See in the 2. part of the Institutes, the exposition of the said Statute of W. 1.

By the said Statute of 13 R. 2. he ought to take no common fine, for before that Statute

Statute he did use to take a reward (which the Act tearmeth a fine) for not inquiry of defaults, whereby the King was prevented of his fine, the delinquent not punished, and the people wronged by extortion and permission of false measures; and therefore the Act provided that no common fine shall be taken, as is aforesaid, but that every person which is found in default touching the same office be punished according to his desert. And the Clerk of the Market cannot set any price of any thing saleable in the Market, for that belongs not to weights and measures; and by the Common Law Arbitrio Domini res aestimari debet, which cannot be altered but by Parliament; and again, Nemo cogitur rem suam vendere etiam iusto precio; and things saleable in the Market of one kind are not of one goodness: but he ought to assise weights and measures.

It is enacted that good examination and correction be had in Towns infranchised touching weights and measures, so as the Statutes thereof made be duly observed.

12 E. 4. 8. b. 23 E.
3. c. 6. 13 R. 2. c. 8.
3 H. 8. c. 8.
8 R. 2. cap. 13.
Rot. Par. 37 E. 3.
nu. 39.

* Which are before in this Chap

CAP. LXII.

The Court of the Commissioners of Sewers.

Quando aqua profluit, that is, when water doth issue, vulgarly, sue: hereupon cometh the word Sutura, for a sewer, passage, channel or gutter of water.

At the complaint of Henry de Lacye Earl of Lincoln, a Commission of Sewers was granted to Roger de Brabazon Mayor, and the Sheriffs of London.

Their authority is by Commission under the Great seal in hæc verba, at this day grounded and warranted by the Act of Parliament 23 H. 8.

Of their jurisdiction you may read in my Reports, and see the Statutes of 6 H. 6. c. 5. 8 H. 6. c. 8. 23 H. 6. c. 9. 12 E. 4. c. 6. 4 H. 7. c. 1. 6 H. 8. c. 10. 23 H. 8. c. 5. & 10. 3 E. 6. c. 8. 1 Mar. c. 11. 13 El. c. 9.

Certain necessary observations upon some of these Statutes, and principally wherein the Statute of 23 H. 8. c. 5. hath been explained, declared, or altered by any of the said subsequent Statutes.

1. This Commission shall be granted to such substantial and indifferent persons as shall be named by the Lord Chancellor, the Lord Treasurer, and the two Chief Justices, or any three of them, whereof the Lord Chancellor to be one.

2. Every Commissioner before he take upon him the execution thereof shall take the Corporal Oath mentioned in that Act before the Lord Chancellor, or such as the Lord Chancellor shall direct by Writ of Deed Potestate, or before the Justices of Peace in their Quarter Sessions, and ought to have lands or tenements of the clear yearly value of 40 Marks of some estate of freehold (except as in the Statute is excepted) upon pain of forfeiture of 40 l. and no Farmer of lands within the Precinct of the Commission, unless he hath lands of some estate of freehold of the yearly value of 40 l. and yet he not to meddle with the lands he hath in farm.

3. The abowry or justification for a distress taken by force of this Commission shall be general, that the said distress, &c. was taken, &c. by force of the Commission of Sewers for a lot or tax assessed by the said Commission, or for such other Act or cause, &c.

4. There must be six Commissioners, &c. at the least, which shall sit by force of the said Commission.

5. That the said Act of 23 H. 8. doth not extend to, nor give authority to the

How many Commissioners must sit. 1 Mar. c. 11. To what uses the Commission of Sewers extend not.

4 Vid. Pasch. 22 E.
1. in Banco. Rot.
52. Ranc' Ric' de
Gras Com' de Se-
wers. Vid. Regist.
287. 2. Certiorar'.
Rot. Parl. Anno
35 E. 1. at Carlisle
23 H. 8. cap. 5.
4 Lib. 5. f. 99. 100.
Rooks case. Lib. 10
fo. 137. Le case de
Molin de Chester, &
f. 139. Reighleys
case.
Ib. 141. Le case de
Iste de Ely.
Vid. Regist. 252. b.
De antiqua tren-
chea obstruenda
& nova facienda
vel habenda Ad
quod damnum.
Ibid. 254. b. De
aqua ductu, &
255. a.
F.N.B. 225. c.
Tr. 31 E. 3. f. 44. b.
in libro meo M.S.
19 E. 3. barr 279.
23 H. 8. cap. 5. 10.
To whom and by
whom this Com-
mission shall be
granted.
f 23 H. 8. cap. 5.
g 13 Eliz. cap. 9.
h 23 H. 8. cap. 5.
Lib. Inrr. Coke
292, 293.

Commissioners of Sewers to reform the great hurt and nuisance by reason of the land rising out of the Sea, and driven to land by storms and winds. A special provision is there made for the County of Glamorgan.

3 Jac. cap. 14.

*Note, an excellent exposition of the Statute of 23 H. 8. by this Parliament of 3 Jac.

It is adjudged by Act of Parliament Anno 3 Jacobis Regis cap. 14. That Walls, Ditches, Banks, Cutters, Sewers, Gates, Causeys, Bridges, and Watercourses in or about the City of London, * where no passage for Boats is used, nor the water therein doth usually ebb or flow: which Walls, Ditches, Banks, Cutters, Sewers, and other the premises, do fall into the River of Thames, are not under the survey, correction and amendment of the Commissioners of Sewers nor of the Statutes made for Sewers in An. 23 H. 8. or of any other Statute of Sewers, as it is rehearsed by full consent of Parliament: and therefore provision is made that those Walls, Ditches, Banks, Cutters, Sewers, and other the premises, shall be subject to the Commission of Sewers.

13 Eliz. cap. 9.

How long the Commission shall endure.

13 Eliz. cap. 9.

The Laws written in Parchment, and Indented, &c. Without Certificate or Royal assent.

6. That a Commission of Sewers shall continue ten years, unless it be repealed or determined by reason of any new Commission, or by Superseas.

7. That Laws, Ordinances and Constitutions made or to be made by force of any such Commission, and written in Parchment indented under the Seals of the said Commissioners or six of them, whereof one part shall remain with the Clerk, &c. and the other part in such place as six of the said Commissioners shall appoint, shall without any Certificate, and without the Royal assent stand and continue in full force notwithstanding any determination of any such Commission by Superseas, until the same be altered by the Commissioners of Sewers after to be assigned, &c.

Determination by expiration.

Justices of Peace.

8. And if any such Commission be determined by expiration of ten years next ensuing the Terme thereof; then such Laws, &c. so indented and sealed, &c. shall continue for one whole year. And that the Justices of peace or six of them, whereof one to be of the Quorum, shall have authority during that year to execute the said Laws, &c.

9. That by the granting of a new Commission within that year, the power of the Justices of Peace to cease.

Note, no certificate or return of the Commissions or of any the Ordinances, Laws, or doings.

10. The said Commissioners shall not be compelled to make any Certificate, or return the said Commissions, or of any of their Ordinances, Laws, or doings, by authority of the said Commissions.

11. See also an alteration by the Statute of 13 Eliz. concerning fees.

12. Lastly, this is certain, that neither the Commissioners of Sewers, nor any other, have such an absolute authority, but that their proceedings are bound by Law.

Regist. 126, 127. F.N.B. 113, 114.

Vide the ancient Commission of Sewers by the Common Law in the Register, and F. N. B.

Rot. Parl. 2 H. 6. du. 57.

A general Commission of Sewers enacted by authority of Parliament, not printed.

6 H. 6. cap. 5.

Stat. 25 E. 3. ca. 4. 45 E. 3. c. 2.

A general Commission of Sewers enacted by Parliament, and in print. But the Commission by the Statute of 23 H. 8. standeth now in force. And yet by diligent perusal of the former, and by advised comparing of them with the latter, it will manifest wherein the former defects were, and how continually by the latter they were supplied and amended, and give a great light for the true understanding of that which now standeth.

Hil. 13 E. 2. coram Reg. Rot. 55. Norf. Pasc. 44 E. 3. coram Rege Rot. 2 Mid. 4 19 E. 3. tit. bar. 279. b 2 E. 3. fol. 26. c The Court of Sewers of Rumney Marsh.

See Hil. 13 E. 3. coram Rege. Leges & consuetudines approbate pro reparatione murorum maritimarum & mundatione Fossatarum & Suerarum in paludibus quæ hic exprimuntur per commissionem Regis ad hoc faciendum in Merthland.

a A particular Commission granted to S. J. de Sutton, & Sir Rob. de Scrope.

b A Commission concerning the River of Lee.

c Rumney Marsh in the County of Kent containing 24000 acres, is at this day, and long time hath been governed by certain ancient and equal Laws of Sewers made by a venerable Justice Henry de Bathe, in the Reign of H. 3. from which Laws not only other parts in Kent, but all England receive light and direction: For example, The said general Act of 23 H. 8. c. 5. in the clause which giveth

gibeth power to the Commissioners to make Statutes, Ordinances, and provisions, &c. necessary and behoeful after the Laws and Customs of Rumney Marsh in the County of Kent, or otherwise by any ways or means, &c.

Both the Town and Marsh of Rumney took their name of one Robert Rumney. This Robert (as it appeareth by the Book of Domesday) held this Town of Odo Bishop of Baieux, wherein he had 12 Burgesles, who for their service at the Sea were discharged of all actions and customs of charge, except felony, breach of the peace and forswearing.

See before in the Chapters of the Courts of London, &c. the Jurisdiction that the Lord Mayor hath in the River of Thames.

C A P. LXIII.

The Court of the Commissioners upon the Statutes of Bankrupts.

WE have fetched as well the name as the wickedness of Bankrupts from forrain Nations: For Banque in the French is menfa, and a Banquer or Eschanger is * menfarius, and route is a sign or mark, as we say, a Cart rout is the sign or mark where the Cart hath gone: metaphorically it is taken for him that hath wasted his estate, and removed his Banque, so as there is left but a mention thereof. Some say it should be derived from Banque and rumpue, as he that hath broken his Banque or state.

In former times as the name of a Bankrupt, so was the offence it self (as hath been said) a stranger to an Englishman, who of all other Nations was freest of Bankruptcy. And the first Statute that we find against this crime, was indeed made against strangers, viz. against Lombards, who after they had made Obligations to their Creditors, suddenly escaped out of the Realm without any agreement made with their Creditors. * It was therefore enacted, that if any Merchant of the Company knowledg himself bound in that manner, that then the Company shall answer the debt: so that another Merchant which is not of the Company shall not be thereby grieved nor impeached: neither do we find either any complaint in Parliament, or Act of Parliament made against any English Bankrupt until the 34 year of H.8. when the English Merchant had rioted in three kinds of collinels, viz. costly building, costly diet, and costly apparel, accompanied with neglect of his Trade and Servants, and thereby consumed his wealth.

He is called in Latin * Decoctor, à Decoquendo, for consuming of his estate in riotous and delicate living. The said Act of 34 H.8. is altered by the Statutes of 13 Eliz. cap. 7. i Jac. cap. 15. & 21 Jacobi cap. 19.

And it is to be observed, that all the aforesaid Statutes and Laws made against Bankrupts, and for relief of Creditors, shall be in all things largely and beneficially construed, &c. for the aid, help and relief of the Creditors.

A Bankrupt is described by the Statute of 13 Eliz. cap. 7. and 1 Jac. cap. 15. but more effectually by the Statute of 21 Jac. cap. 19. So as by all these three he is perfectly described. And the Commission doth extend to all and every of the said descriptions and articles thereof.

* The authority of the Commissioners is by Commission under the Great seal; their jurisdiction and power is by force of the said Acts of Parliament which ought to be pursued, & or else they are subject to the action of the party grieved, for he hath no other remedy. The Lord Chancellor or Lord Keeper upon Complaint made unto him in writing hath authority to grant the said Commission.

D o

The

Bankrupts
stat. 13 Eliz. cap. 7.
1 Jac. cap. 15.
21 Jac. cap. 19.

Bankrupts
stat. 13 Eliz. cap. 7.
1 Jac. cap. 15.
21 Jac. cap. 19.

Bankrupts
stat. 13 Eliz. cap. 7.
1 Jac. cap. 15.
21 Jac. cap. 19.

Bankrupts
stat. 13 Eliz. cap. 7.
1 Jac. cap. 15.
21 Jac. cap. 19.

* The derivation and signification of Bankrupt. Cicero pro Flaminio: In qua civitate nummus moveri nullus potest sine quinque; praetoribus, & quinque; menfariis.

25 E.3. Stat. 3. cap. 23. Parl. 50 E.3. nu. 160. against Lombards.

* 51 E.3. nu. 51. Vid. 50 E.3. ca. 6. & 2 R.2. cap. 3. Stat. 2. against frauds generally. 34 H.8. cap. 4.

Cicero in Catilinam: Exercitum collectum ex rusticis, mendiculis & decoctoribus.

The description of a Bankrupt. The authority of the Commissioners and their jurisdiction.

b Lib. 8. f. 21. Int. Curt & Delabar. c 13 Eliz. cap. 7. who may grant the Commission.

* Three qualities
of every of these
Commissioners.

General pleading.
1 Jac. cap. 15.
21 Jac. cap. 19.

* Lib. 2. fo. 25, 26.
Cullamors case.
Lib. 8. fo. 98. Bal-
poles case.
Ib. fol. 121. Int'
Cutt & Delabar.

The Law hath provided that these Commissioners ought to have 3 quali-
ties, viz. wisdom, honesty and discretion: which if it be observed, it is the best
means for the due execution of the said Statute, and the life of these Laws doth
consist in the due execution thereof: and for such Commissioners if any Ac-
tion shall be brought against them, &c. for doing of any thing by force of the
said Statutes, they may plead generally, and not to be divided to any special
pleading.

They have power to examine the offender upon oath, and after he be declared
a Bankrupt, to examine his wife upon oath, and to examine witnesses also upon
oath. &c. the Statute. And they have power to break any the Houses, Cham-
bers, Warehouses, &c. Trunks and Chests of such offenders. &c. the other
parts of this Act of 21 Jacobi, which are plainly and effectually expressed, and
need not here to be recited.

For the exposition of the said Statute of 13 Eliz. * See in my Reports lib. 2.
fo. 25, 26. Cullamors case. Lib. 8. fo. 98. in Balpoles case, & ibid. fo. 121. inter
Cutt & Delabar.

CAP. LXIV.

Commissioners for examination of Witnesses.

INASMUCH as the Court of Star-Chamber, the Chancery in cases of equity,
the Exchequer Chamber in cases of equity, the Court of Wards, and the
Duchy of Lancaster do proceed upon witnesses examined before Commissioners,
or in Court before the Examiners, it shall be necessary (as a matter of great
importance) to lay somewhat of the power, authority, and duty of the said
Commissioners and Examiners, and incidently of witnesses.

See li. 9. fo. 70, 71.
Peacocks case, for
this and some of
the cases following
Lib. 9. ubi sup.

The Commissioners, albeit named by the parties reciprocally, ought to stand
indifferent, and do their uttermost endeavour to find out by due examination the
whole truth, and to suppress no part thereof: for their authority is to that end
marily and wholly from the King by force of his Commission.

Neither Commissioner nor Examiner are strictly bound to the letter of the
Interrogatory, but ought to explain every other matter or thing which riseth
necessarily thereupon, for manifestation of the whole truth concerning the mat-
ter in question.

Lib. 9. ubi supra.

Neither Commissioner nor Examiner ought to discover to either of the par-
ties or to any other, any of the depositions or any part of them, which they have
taken before publication be granted.

Lib. 9. ubi supra.

Neither Commissioner nor Examiner after the Examination begun, ought
to confer with either party touching the examination, or take new instructions
concerning the same.

Aug. Serm. 28.
de verbis Apostoli.
Jurare est jus veri-
tatis Deo reddere.
AZO. Jusjurandum
est affirmatio vel ne-
gatio, religione ad-
hibita. See the
third part of the
Institutes cap.
Perjury.

INASMUCH as the witness by his oath, which is so sacred, as he calleth Al-
mighty God (who is truth it self and cannot be deceived, and hath knowledge of
the secrets of the heart) to witness that which he shall depose: it is the duty both
of the Commissioner and Examiner gravely, temperately, and leisurely to take
the deposition of the witness, without any menace, disturbance, or interruption
of them in hinderance of the truth, which are grievously to be punished. And af-
ter the depositions taken, the Commissioners and Examiners ought to read the
same distinctly to the witnesses, and suffer them to explain themselves for the
manifestation of the whole truth. And it is safe for the Commissioner and Exa-
miner that the witnesses subscribe their names or marks to the Paper-book,
but they must be certified in Parchment.

And

And albeit the Commissioners be not equal in state or degree, yet are they all of equal power and authority: for, as it hath been said of old, that there might be priority, but no superiority amongst Commissioners.

Interrogatories ought to be single and plain, pertinent to the matter in question, and in no sort captious, leading, or directory.

In some cases the Courts of the Common Law do judge upon witnesses, but they must ever give their testimony viva voce: * as in dower, if the issue be whether the husband be alive or no, &c.

Witness is derived of the Saxon Verb Weten: i. Scire. Quia de quibus scium testari debent; & * omne sacramentum debet esse certæ scientiæ. In Latin Testis à testando; & testari est testimonium perhibere: unde Regula juris, Plus valet unus oculatus testis, quam auriti decem: Testis de visu præponderat aliis.

a An Oath ought to be accompanied with the fear of God, and service of God for advancement of truth, Dominum Deum tuum timebis, & illi soli servies, & per nomen illius jurabis.

Bracton saith that an Alien boyn cannot be a witness: which is to be understood of an Alien Infidel: b for the Bishop of Ross being a Scot boyn, was admitted to be a witness, and sworn Anno 14 Eliz. in the case of the Duke of Norfolk by the opinion of the Justices assistants. c Testis falsus non erit impunitus.

Nocte dieque suum gestat sub pectore testem:

His Conscience always gnawing and vexing him. d Vox simplex nec probationem facit, nec præsumptionem inducit.

e Testium numerus si non adjicitur, duo sufficient.

f Jurato creditur in judicio.

g Testibus deponentibus in pari numero dignioribus est credendum.

h Testimones ne poent testefe le negative, mes laffirmative.

i Allegans contraria non est audiendus, verum vero consentiens est falsum nec vero nec falso.

j Juramentum est indivisibile, & non est admittendum in parte verum, & in parte falsum.

k Allegans suam turpitudinem non est audiendus.

l Judex non potest esse testis in propria causa.

m Jusjurandum inter alios fact' nec nocere, nec prodesse debet.

n Facultas probationum non est angustanda.

o De crimine in Lupanari commissio, lupanares testes esse possunt.

p Qui prodit in scenam mercedis ergo, infamis est.

Witnesses ought to come to be deposed untaught, and without instruction, and should with the victory to the party that right hath, and that Justice should be administered: and should say from his heart, Non sum doctus, nec instructus, nec curo de victoria, modo ministretur Justitia. See Britton 134, 135.

* 8 H. 6. 13. 2 E. 2. trial 46. &c.

Dier 2 Eliz. 125.

13 Eliz. 306.

¶ Of witnesses.

Additions to the

1 part of the Inst.

Sect. 1. fo. 6.

And to the third

part of the Insti-

tutes cap. Perjury.

* 12 Aff. 12.

23 Aff. n.

11 Aff. p. 19.

a Deut. 6. 13.

b 16 Januarii

14 Eliz.

c Prov. 19.

d Bract. lib. 5.

fo. 406. b.

2 H. 7. Kelw. 96. a. b.

e Bract. lib. 5. 359.

f Vid. 2 E. 3.

trial 45.

g F. N. B. 106, 107.

h 16 E. 4. 10. a.

i Trin. 13 E. 1. in

Com. Banco.

Rich. de Rayn-

hams case.

Histriones Merce-

narii.

CAP. LXV.

Curia cursus Aquæ apud Gravesend.

Of this Court, and others like, which are in private, we intend not to treat, for that the labour herein were infinite, and serveth nothing for the publick, whereat our principal aim hath been.

CAP. LXVI.

The Kings Swanbeard.

Rot. Pat. 16 R. 2.
part 1. m. 39.

* Tr. 33 E. 1. Essex
coram rege.

Rot 124.

7 H. 6. acc.

¶ The Kings Alneger.

a Rot. Pat. 14 E. 1.
Tho. Darlington
militi.

This appeareth
also by the Sta-
tutes themselves,
25 E. 3. cap. 1.

Stat. 4.

27 E. 3. Stat. 1.
cap. 4. 3 R. 2. cap.

R. 3. Rot. Claus. 17 R. 2. m. 14. b The derivation of Alneger.

What authority the Kings Swanbeard hath, being of ancient time by his Office Magister deductus Cygnorum, you may read Rot. Patentum Anno 11 H. 4. part 1. m. 14. Rot. Pat. 30 E. 3. part 1. m. 20. and Lib. 7. fo. 15. &c. Le case de Swannes; but Court he hath not: No Fowl can be a * stray but a Swan.

So likewise there is an ancient Officer of the Kings Alneger of the Kings gift being before any Statute: As taking one example for many. a In 14 E. 1. Sir Thomas Darlington was by the Kings Letters Patents Alneger of Broad Cloth, and had a fee of the King for the exercise of his Office; For the fee that he had of the Subject was (as it ought to be) by Act of Parliament. 27 E. 3. St. 1. cap. 4. b Alneger of Aulne in French, and that of ulna, ulnator. See before concerning the Alnaging of new Draperies, Cap. Of the High Court of Parliament, pag. 31.

17 R. 2. cap. 2. & 5. 1 H. 4. cap. 13. 11 H. 4. 6. 13 H. 4. 4. 11 H. 6. 1. 31 H. 6. 5. 4 E. 4. 1. 8 E. 4. 1.

CAP. LXVII.

*The Wardens Courts in the East, West, and middle
Marches adjoining to Scotland.*

They proceeded according to the Laws called the *March Law*, or *Borders Law*, but their jurisdiction was increased by Act of Parliament. The limits of their jurisdiction was within the *Marches*, which were confined to the Counties of Northumberland, Cumberland, Westmerland, and the Town of Newcastle upon Tyne in the County of York.

For the word [*Marches*,] See before Cap. President and Council of Wales.

But since King James was Monarch of both Kingdoms, the batable grounds on both sides are become quiet, and so peaceable, as all the said Courts in the East, West, and middle *Marches* are vanished, and hostile Laws on both sides by authority of Parliament in either of the Kingdoms repealed. See the said Statute of 4 Jacobi. See the First part of the Institutes, Sect. 3.

CAP. LXVIII.

Of Callais, or Callis, Calletum.

Rot. Par. 40 E. 3.
nu. 211, 212.

6 H. 6. nu. 41.

See the Statute of
27 H. 8. concerning
good Laws and
orders for Callis
and the Marches
thereof, and 1 H. 7.
cap. 3.

b 21 H. 7. 33.

11 H. 8. Kelw.

202. b. Par. 3 R. 2.
nu. 48.

c Pat. 15 E. 3.

2 part. Par. 9 R. 2.
nu. 4.

d 42 E. 3. cap. 10.
Lib. 7. in Calvins
case.

e Rot. Par. 9 R. 2.
nu. 4.

9 H. 5. Stat. 2. ca. 5.
f 1 R. 2. nu. 37.

g Parl. 50 E. 3.
nu. 209.

This strong Port Town, the famous and flourishing Mart, Staple, and
vent of English commodities was holden and kept by the space of 211
years by 11 several Kings, viz. E. 3. R. 2. H. 4. H. 5. H. 6. E. 4. E. 5. R. 3. H. 7. H. 8. E. 6.
and holden and lost by King Philip and Mary the first Queen regnant of this
Realm, the Lord Wentworth then Deputy there.

It was governed by Englishmen and by English Laws, some particular cus-
toms excepted. b And of a judgment given there a Writ of Error did lie re-
coznable into the Kings Bench. c Before the Staple at Callais, it was kept at
Bruges in Flanders.

d The Childzen born there were inheritable in England and so declared by
authority of Parliament.

e And there the King had his Mint in such manner as in the Tower of Lon-
don. Certain it is that riches followed the Staple wheresoever it was kept.
f And it could not be appointed in any place but by Act of Parliament.

g The Staple being at Callais, upon all rodes forth of the Town by the Cap-
tain, the Mayor of the Staple furnished him forth of Merchants and their ser-
vants to the number of 100 Will-men, and 200 Archers without any wages.
And yet it appeareth in the Parliament Roll of 2 R. 2. nu. 15. that Callais cost
the King yearly twenty thousand pounds.

See the Parliament Roll of 50 E. 3. nu. 211, 212. for the Mayors Courts, &c.
and Liberties, and Franchises, &c. there. Many Acts of Parliament have been
made concerning this Town, and the Staple therein, which need not here to
be recited, only we thought it not good totally to pretermitt it, because the Kings
right remains to it, and it may hereafter be restored (which is so much desired)
to the right owner.

CAP. LXIX.

*Of the Isle of Man, Insula Euboniæ, modo Mannæ,
and of the Law and Jurisdiction of the same.*

This Isle hath been an ancient Kingdom, as it appeareth in Lib. 7. in Calvin's case, which need not here to be recited. And yet we find it not granted or conveyed by the name of a Kingdom, sed per nomen Insulæ, &c. cum patronatu Episcopatus. He hath the Patronage of the Bishoprick of Sodor, which is a visible mark of a Kingdom; albeit of ancient time the Archbishop of Canterbury was Patron of the Bishoprick of * Rochester, and the Earl of Glouc' of the Bishoprick of Landaf. Vide Lib. M.S. in Recept. Scaccarii f. 166. & Lib. Parliam. in Turri London Temps E.1. fol. 19. 21.

Walf. pag. 387.
Lib. 7. fol. 21. in
Calvin's case.

* Rot. Cart. 16 Jo-
han. m. 6.

William le Scrope emit de Domino Willielmo de Monte acuto Insulam Euboniæ, (i. Mannæ:) Est nempe jus ipsius Insulæ ut quisquis illius sit Dominus Rex vocetur, cui etiam fas est Corona aurea coronari.

Anno Dom. 1393.
Walf. An. 17 R. 2.

Corona aurea.

The Lord Scrope forfeited the same to H. 4. for High Treason. King H. 4. granted the same to Henry Earl of Northumberland in these words, Rex, &c. Dei gratia nostra speciali dedimus & concessimus Henrico Comiti Northumbriæ Insulam, Castrum, * Pelam, & Dominium de Man, ac omnia insulas & Dominia eidem Insulæ pertinen' quæ fuer' Willielmi le Scrope Chivalier defuncti, quem in vita sua Conquestati fuimus, & ipsum sic Conquestatum decrevimus, & quæ ratione Conquestus illius tanquam Conquestata cepimus in manum nostram. Quæ quidem Conquestum & Decretum in præfenti Parlamento nostro de assensu Dominorum Temporalium in eodem Parlamento existentium quoad personam præfati Willielmi, ac omnia, terras, tenementa, bona, & catalla sua tam infra regnum nostrum quam extra ad supplicationem Communitatis Regni nostri affirmata existunt, &c. Habenda & tenenda eidem Comiti & hæredibus suis, &c. per servic' portandi diebus Coronationis nostræ & hæredum nostrorum ad sinistrum humerum nostrum & sinistros humeros hæredum nostrorum per seipsum aut sufficientem & honorificum deputatum suum illum gladium nudum quo cincti eramus quando in parte de Holdernes applicuimus, vocatum *Lancaster Sword*, durante processione & toto tempore solemnizationis Coronationis supradictæ.

Of the quality of
him, See Walf.
Ubi supra.
Rot. Pat. 1 H. 4.
Rot. 2. Bundello 2.
parte 5. m. 36.
* A Pele or Pile, a
fortress in a small
Isle belonging to
the Isle of Man.
Nota, the title of
the King by Con-
quest is affirmed
by Parliament.

In this little Kingdom there are 2 Castles, 17 Parishes, 4 Market Towns, and many Villages, and in that Isle there is a Bishoprick, as hereafter shall be shewed.

Anno 5 H. 4. the said Henry Earl of Northumberland was attainted of treason, and by Act of Parliament 1 Martii, 7 H. 4. it is enacted that the King should have the forfeiture of all his lands and tenements. And afterwards in 7 H. 4. the King granted the Isle of Man una cum Patronatu Episcopatus to Sir John Stanley for life: and after in the same year he granted the same Isle una cum Patronatu Episcopatus, to the said Sir Joh. Stanly and to his heirs; Tenend' de Rege hæredibus & successoribus suis per homagium ligeum: Reddendo nobis duos Falcones semel tantum, viz. immediate post homagium hujusmodi fact': Et reddendo hæredibus nostris regibus Angliæ duos Falcones diebus Coronationis eorundem hæredum nostrorum pro omnibus aliis serviciis, consuetudinibus, & demandis, adeo libere, plene & integre sicut Willielmus Scrope Chivalier vel aliquis alius, &c.

Rot. Pat. 7 H. 4.
parte 2. m. 18.
Cum patronatu
Episcopatus.

This Sir John Stanley had issue Sir John Stanley Knight, who had issue Sir Henry Stanley Lord Chamberlain to King H. 6. who created him Lord Stanley, who had issue George, who had issue Thomas, whom King H. 7. created Earl

Carl of Derby to him and the heirs males of his body, who had issue Thomas, who had issue Edw. who had issue Henry, who had issue Ferdinando and William. Ferdinando had issue Anne, Frances and Elizabeth, and died without issue male: And between these daughters being heirs general, and William Carl of Derby being heir male, question was moved concerning the title of the Isle of Man: which by Queen Elizabeth was referred to the Lord Keeper Egerton, and to divers Lords of the Council, and to Popham Chief Justice of England, Anderson Chief Justice of the Common Pleas, and Peryam Chief Baron: who Trin. 40 Eliz. upon hearing of the Council of both sides, and mature deliberation, resolved these five points. 1. That the Isle of Man was an ancient Kingdom of it self, and no part of the Kingdom of England. 2. They affirmed a case reported by Kelw. Anno 14 H. 8. to be Law, viz. Mich. 14 H. 8. an office was found that Thomas Carl of Derby at the time of his death was seised of the Isle of Man in fee; whereupon the Countess his wife, by her Council, moved to have her Power in the Chancery: but it was resolved by Brudnell, Brook and Fitz. Justices, and all the Kings Council, that the office was merely void, because the Isle of Man was no part of the Realm of England, nor was governed by the Law of this Land, but was like to Tourny in Normandy, or Gascoign in France, when they were in the King of Englands hands, which were merely out of the power of the Chancery, which was the place to endow the widow of the King, &c. 3. It was resolved by them that the Statute of W. 2. De donis conditionalibus, nor of 27 H. 8. of Wills, nor the Statutes of 32 or 34 H. 8. of Wills, nor any other general Act of Parliament did extend to the Isle of Man for the cause aforesaid, but by special name an Act of Parliament may extend to it. 4. It was resolved that seeing no office could be found to entitle the King to the forfeiture of Treason, that the King might grant by a Commission under the Great Seal to seise the same into the Kings hands, &c. which being done and returned of Record is sufficient to bring it into the Kings seisin and possession, and into charge, &c. 5. That the King might grant the same under the Great Seal, because he cannot grant it in any other manner. And herewith agreeth divers grants under the Great Seal of this Isle, viz. 4 Junii, 18 E. 1. Rex E. 1. concessit Waltero de Huntercombe, &c. Rex E. 2. concessit Petro de Gaveston, &c. 1 Maii, 5 E. 2. Gilberto Magaskill, and in the same year granted Henrico de Bello monte Insulam predictam cum omni Dominio & Justitia regali pro termino vite, &c. 6. It was resolved that a fee simple in this Isle passing by the Letters Patents to Sir John Stanley and his heirs, is descendible to his heirs according to the course of the Common Law, for the grant it self by Letters Patents is warranted by the Common Law in this case: and therefore if there be no other impediment, the Isle in this case shall descend to the heirs general, and not to the heir male; as the grand Seigniories and Connots in Wales were impleadable at the Common Law, but the lands holden of them by the customs of Wales, &c. Which resolutions we have thought good to report, because they are the best directions that we have found, both in these, and for the like cases.

Rot. Pat. 2 Apr.
6 E. 2.

* A Dema a Saxon word for a Judge. Giraldus: sunt duo Judices in Insula Mannia (olim Emania nuncupata) qui de litibus ibidem emergentibus cognoscunt.

By these Letters Patents it appeareth, that Simon Montacute had intruded into and occupied the said Isle in nostri exheredationem, for which he was attached to answer the same in the Kings Bench at the suit of the King, but what proceeded thereupon we yet find not.

But now let us come to their Laws, and Jurisdiction of this Isle, the like whereof we find not in any place. Their Judges they call * Deemsters, which they chose out of themselves. All controversies they determine without process, pleading, writing, or any charge or expence at all. If any case be ambiguous and of greater weight, it is referred to 12, which they call Claves Insule, the keys of the Island. They have Coroners (quos Annuos vocant) who supply the office of a Sheriff.

But albeit this be so, yet when this Isle was in the Kings hands, if any injustice or injuries were done to any of his Subjects there, the King might grant

a Commission for redress thereof: the like whereof we find, Rot.Pat. Anno 20 E.1. in these words; Rex dilectis & fidelibus suis Nicholao de Segrave seniori, Osberto de Spaldington, & Johanni de Suthewell, Salutem. Sciatis quod assignavimus vos Justiciarios nostros ad querelas omnium & singulorum de Insula de Man se conqueri volentium de quibuscunque transgressionibus, & injuriis eis per quoscunque tam ballivos & ministros nostros quam alios in prædicta Insula illatis audiend & terminand, & ad plenam & celerem Justiciam partibus inde faciend secundum legem & consuetudinem partium illarum. Et ideo vobis mandamus, quod ad certos dies & loca quos, &c. in Insula prædicta querelas, &c. audiat & terminetis in forma prædicta facturi, &c. Salvis, &c. Mandavimus enim Custodi nostro Insule prædictæ; quod ad certos, &c. in Insula prædicta venire fac' coram vobis tot & tales, &c. In cujus, &c. Teste Rege apud Berewick, 15 die Julii.

In the Margent, thus, *De querelis hominum Insule de Man. audiend & terminand.*

Nota, secundum legem & consuetudinem Insule de Man.

So as albeit the Kings Writ runneth not into the Isle of Man, yet the Kings Commission extendeth thither for redress of injustice and wrong: but the Commissioners must proceed according to Law and Justice of the Isle. They have peculiar Laws or Customs; for example: If a man steal an Horse or an Oxe, it is no Felony, for the offender cannot *hide them, but if he steal a Capon or a Pigge he shall be hanged, &c. Upon the sale of a Horse or any contract for any other thing, they make the stipulation perfect, per traditionem stipulae. Nota, the true derivation of stipulation. And as they have peculiar Laws, so have they a proper Language.

* They have no Woods.
12 H.8. fo.5.a.

This Isle hath a Bishop instituted by Gregory the Fourth Bishop of Rome, Episcopus Soboracensis. and he is under the Archbishop of York, but hath neither place nor voice in the Parliament of England. In hac Insula Juxta Ecclesiasticus citat, definit, & infra Octo dies parent, aut carceri intruduntur.

The Inhabitants of this Isle are Religious, Industrious, and true people without begging or stealing.

C. A. P. LXX.

Of the Isles of Jerſey alias Gearſey, olim Cæſarea, and Garnſey, olim Saruia, and of the Law, and Jurisdiction of the ſame.

Jerſey hath 12
Parliſhes.
Garnſey 10.
Baſch. 17 E.2.

Both theſe Iſles did of ancient time belong to the Dutchy of Normandy: but when King H.1. had overthrowen his elder Brother Robert Duke of Normandy, he did unite to the Kingdom of England perpetually the Dutchy of Normandy together with theſe Iſles: and albeit King John loſt the poſſeſſion of Normandy, and King H.3. took money for it, yet the Inhabitants of theſe Iſles with great conſtancy remained, and ſo to this day do remain true and faithful to the Crown of England; And the poſſeſſions of theſe Iſlands being parcel of the Dutchy of Normandy, are a good ſeiſin for the King of England of the whole Dutchy.

Concerning the Judicature and Cuſtoms of theſe Iſles whereat we principally aim, it appeareth by the Kings Records in the Tower. Quod Rex Johannes conſtituit 12 Coronatores juratos ad Placita & Jura ad Coronam ſpectantia cultodienda, & conceſſit pro ſecuritate Inſularum, quod Ballivus de cætero per viſum Coronatorum poterat placitare ſine brevi de nova diſſeiſina facta infra annum, de morte antecellorum infra annum, de dote ſimiliter infra annum. And for the moſt part they proceed according to the Cuſtoms of Normandy.

Coram rege Rot.
67. Jerſey.
2 E.3. fo.5.b.
The Abbot of the
Mount of S. Mich.
caſe.

Drugo Barentyne dicit quod 40. An eſt tempus extra memoriam ſecundum conſuetudinem partium illarum.

King E. 3. assigned Hen. de Guldeford and others, Juſtices Errants in the Iſles of Garnſey and C. by his Commiſſion to enquire if he had right in the Mannor of C. &c. and there it appeareth, that they demanded adviſement of the men of the Iſles learned in their cuſtoms, who informed them of the cuſtoms of the Iſles, which the Juſtices followed, and there it appeareth that if the information was againſt the Laws of the Iſles, they may be holpen by the Laws of the ſame. See the Book.

Rot.Clauf. 9 E.3.
& 25 E.3.
Mich. 41 E.3.
Coram rege Rot.
109. Jerſey in
placito tranſgreſ.
a Secundum conſ.
Inſulæ præd.
b Mic.6 H.8. 172.b.
Kelw. to the Bay-
liſſ and Jurates of
Jerſey Lib.7. fo.
20,21. in Calvins
caſe.

Quod in Cuſtumis & aliis rebus tanquam indigenæ & non aliegenæ tractentur, &c. Quod juratores in Inſula, &c. non protrahunt judicia ſua ultra unius anni ſpaciū.

An Action of treſpaſs was brought by A. in the Kings Bench for a treſpaſs done by B. in the Iſle of Jerſey: whereupon in the Record this Entry was made. Et quia negotium prædictum in Curia hic terminari non poteſt, eo quod Juratores Inſulæ præd' coram Juſticiariis hic venire non poſſunt, nec de jure debent, nec aliqua negotia de Inſula prædicta emergentia non debent terminari niſi ſecundum conſuetudinem Inſulæ prædictæ. Ideo totum recordum negotii mittatur in Cancellariam domini regis, ut inde fiat ^b commiſſio domini regis, cui vel quibus domino regi placuerit ad negotium prædictum in Inſula prædicta audiend' & terminand' ſecundum conſuetudinem Inſulæ prædictæ.

c Regiſt.fo.22.
d Theſe little Iſles
of Serk and Aure-
ney do lye between
and near the other
and were parcel
alſo of the Dutchy
of Normandy.

By this it appeareth, that albeit the Kings Writ runneth not into theſe Iſles, yet his Commiſſion under the Great Seal doth, but the Commiſſioners muſt judge according to the Laws and Cuſtom of theſe Iſles.

e De Attornato generali in Inſulis de Gernſey, Jerſey, d Serk & Aureney fac' virtute Brevis domini Regis. Rex omnibus Ballivis & fidelibus ſuis in Inſulis de Gernſey, Jerſey, Serk & Aureney ad quos, &c. Sciatis, &c. in quibuſcunque curiis noſtris Inſularum earundem, &c. poſt adventum ipſius A. in Inſul' prædict' ſi contingat

contingat ipsum A. interim venire ad partes illas. Teste, &c. They are not bound vid. 33 H.8.c.6. by our Acts of Parliament, unless they be specially named.

The King hath granted to the men of the Isles of Gernsey, Serk and Aurenay, that they during the space of 8 years shall be free of all manner of Tolls, Exactions and Customs within the Realm as his Liegemen and Denizens. Rot.Par. 14 R.2. nu.30.

Insulani petunt, quia sunt in mari constituti, quod non ulterius extra Insulas predictas prosequerentur ad eorum periculum, & non facile possunt sequi Curias Regis in Anglia.

For the Isles of Jersey and Gernsey, 16 Mich. 5 E.3. coram Rege Rot. 46. Pasch. 17 E.2. Coram Rege Rot. 67.

Within Gernsey there are ten Parishes, one Market Town, being the Port or Haven called S. Peters Port by the Castle of Gornet. Jersey hath S. Albanes and Hillary two little Islands adjacent, it hath twelve Parishes, and four Castles.

CAP. LXXI.

De Insula Vectis or Vecta, of the Isle of Wight.

OF this we shall not need to say any thing, because it is and ever hath been part of Hamshire, and ever governed by the Laws of England, as the other Shires have been: but seeing we have named it, we will relate some things which we have observed.

First, there hath been an ancient Baron, de Insula, of the Isle, or Lisle, and of latter times there was a Viscount of the same, which is to be understood of the Isle of Wight: for in the Parliament Rolls of E. 2. I find him called de Insula vecta.

Secondly, Henry de Beauchamp Earl of Warwick, for the singular favour which King Henry the Sixth bare to him, crowned him King of Wight: but we could never find any Letters Patents of this creation, because (as some do hold) the King could not by Law create him a King within his own Kingdom, because there cannot be two Kings of the same place in one Kingdom: And after the same King named him Primus Comes totius Angliæ. But of this it is truly said: Cum illo novus hic & insolitus titulus omnino evanuit. Camden.

See the Statute of 4 H.7. cap.16. against taking of Farms within this Isle, and the power of Judicature given thereby to the Captain of this Isle, or his Lieutenant in a certain case.

CAP. LXXII.

Of the Island called Lindesfarne or Leidisfarne, situate by the River Lied, having on the South Eastward the Island of Farn, and is called the Holy Island.

It hath one Castle, one Church, and one Parish, and a safe Haven defended by a Block-house.

It is called the holy Island, for that it being a solitary place, holy men in times past retired themselves thither for their better, and more devout service of God. It was of ancient time a Bishops seat, which was after translated to Duresme, and is governed by the Law of England.

Farne Isle.

For that this Isle of Farne hath neither Church nor Town, but only a Castle, I pass it (and other like Isles) over.

C A P. LXXIII.

*Of the Forrests, and the Jurisdiction of the Courts
of the Forrest.*

For the word *Foresta*, see *Domesday* in *Glouc'* & *alibi*.

For the derivation and description thereof, and some other things concerning the same; See the First part of the *Institutes*.

In Latin it is called *Saltus* or *Sylva*. And so in *Domesday*, *Sylva est defens'*, scilicet, in *Foresta Regis*.

A *Forrest* doth consist of 8. things, viz. of *Soil*, *Cobert*, *Laws*, *Courts*, *Judges*, *Officers*, *Game*, and certain *Bounds*.

* *Foresta est nomen collectivum*, and by the grant thereof the soil, game, and a free Chase doth pass.

And seeing we are to treat of matters of game, and hunting; Let us (to the end we may proceed the more cheerfully) recreate our selves with the excellent description of *Didoes Doe* of the *Forrest* wounded with a deadly arrow stucken in her, and not impertinent to our purpose.

Uritur in foelix Dido, totaque vagatur
Urbe furens, qualis conjecta Cerva sagitta,
Quam procul incautam nemora inter Cressia fixit
Pastor agens telis, liquitque volatile ferrum
Inscius: illa fuga sylvas saltusque peragrat
Dictæos, * hæret lateri lethalis arundo.

And in another place using again the word [*sylva*] & describing a *Forrest*, saith.

Ibat in antiquam sylvam stabula alta ferarum.

King John the 15 of June in the 18 year of his reign at *Kummigsmead*, aliàs *Kyme meade*, between *Stanes* and *Windfor*, granted the like Charter, as *Carta de Foresta* is.

And now let us set down the Courts of the *Forrest*.

Within every *Forrest* there are these Courts.

1. The Court of the Attachments or the *Woodmote Court*, this is to be kept before the *Werderoys* every forty days throughout the year, and thereupon is called the forty day Court. At this Court the *Forresters* bring in the Attachments de *Viridi* & *Venatione*, and the presentment thereof, and the *Werderoys* do receive the same, and enrol them, but this Court can only enquire, and not convict; but it is to be observed, that no man ought to be attached by his body for *Wret* or *Benison*, unless he be taken with the manner within the *Forrest*, otherwise the Attachment must be by his goods.

2. The Court of Regard or Survey of Dogs is holden every third year for expedition or lawing of Dogs by that Court.

3. The Court of * *Swanimote* is to be holden before the *Werderoys* as Judges by the Steward of the *Swanimote* thrice in the year, and the *Forresters* ought to present their Attachments at the next *Swanimote Court*, and the *Freeholders* within the *Forrest* are to appear at the *Swanimote* to make *Questions* and *Juries*. And this Court may inquire de *superoneratione Forestariorum* & *aliorum ministrorum Forestæ*, & de eorum oppressionibus populo nostro illatis. And this Court may not only enquire, but convict also, but not give judgment.

Ministrorum Forestæ, so called because it is but a preparative for the Justice Seat. * *Ordinat. Forestæ*. 34 E. 1. 34 E. 1. cap. 4.

Domesday in *Com.*

Glouc' & *alibi*.

2 Mar. Dier 169.

1 part of the *Inst.*

Sect. 378. f. 233. a.

Ockham cap.

Quod Regis Fo-

resta. *Bracton*

fol. 231. & 316.

Britton fol. 34.

Fleta l. 2. c. 34. 35.

* 1. part of the

Inst. Sect. 1. f. 5. b.

In the Saxons

time *Forrests*

were called *walds*,

unde *waldgrave*, &

prepositus Forestæ.

Virgill.

Sylva, as in

Domesday Saltus

a saltando, quia ibi

feræ saltant.

* Like to an evil

conscience in the

false and furious

Officer of the *For-*

rest if any such be.

Carta de Foresta

cap. 16.

The Court of At-

tachments.

1 E. 3. cap. 8.

7 R. 2. cap. 4.

Cart. de Forest.

cap. 6.

The Court of the

Lawing of Dogs.

Cart. de Forest.

c. 8. Of *Swani-*

mote. 1 E. 3. c. 8.

50 E. 3. *Assis* 442.

Swanimote is de-

rived of *Swein*,

that is, *Saxonice*

Minister, & *Mote*,

or *Gemote*, which

is, *Curia*, i. *Curia*

is, *Curia*, l. *Curia*

45 E. 3. fol. 7.

* We will hereafter shew from whence these several names be derived, and the duty of their several places.

See Domesday Warw. Si vero per mare contra hostes ibat Rex, vel quatuor barfneias, vel quatuor libras denariorum ei mittebant.
a Ordinatio Forestar. 34 E. 1.
b Regist. 8. b. F.N.B. 67. c.
c See the 2 part of the Inst. Magna Carta cap. 29.

* Rot. Par. Anno E. 3. nu. Inc' petitiones.
d See the 2 part of the Inst. W. 1. cap. 15. Bracton lib. 3. fol. 154. Flet. lib. 2. c. 2. e F.N.B. 67. a. Register. 1 E. 3. cap. 8.

Regist. 80. b.
43 E. 3. 30. a. & b.

Consuetud' & Assisa de Foresta. Vet. Mag. Cart. parte 2. fol. 29.

* Nota, the entry is, *Præsentatum, & convictum per Viridam*.
f 50 E. 3. Ass. 442. Ordinat' Forest. 34 E. 1. Presentmēt by 36.

For the Jurisdiction of this Court I find a notable case in 45 E. 3. in a writ of trespass of false imprisonment brought against J. de W. The Defendant said that he is Forrester in fee of the Forrest, and that at a certain Swanmote it was presented by the * Forresters, Werderors, Regarders, and Agisters that the Plaintiff had chased and taken Deer within the Forrest, whereupon the Defendant being Forrester in fee came to the Justice in Cir in this County (that is, pledges to answer the same before the Justice in Cir in this County) (that is, at the Justice Seat) and that to do the Plaintiff refused, by force whereof he retained him, until he had performed the Statute in that case provided, and justified the imprisonment. The Plaintiff replied de son tort demesne sans tiel cause, and the issue was received by the Court. And it was said that before the Justice in Cir he should have no averment against the presentment of the Forresters.

Out of this case we do observe 6 Conclusions. 1. That the Law of the Forrest is allowed, and bounded by the Common Laws of this Realm, and therefore it is necessary, that the Judges should know, and be learned in the same. 2. That though the Werderors be Judges of the Swanmote, and the Steward but a Minister, yet the presentment in that Court is as well by them as Werderors, as by Forresters, or Keepers, Regarders, and Agisters, by the Law of the Forrest. 3. b That a Forrester or Keeper may arrest any man that kills or chaleteth any Deer within the Forrest when he is taken with the manner within the Forrest, or if the offender be indicted. But then it is demanded, e what if a man be so imprisoned, and after offer sufficient pledges, and they are not taken; what remedy for the party, seeing there are very seldom Justices seats for Forrester's holden? The answer is, that in the Term time he may have ex merito Justitiæ a Habeas Corpus out of the Kings Bench, or if he have privilege, out of the Court of Common Pleas, or of the Exchequer or out of the Chancery without any privilege either in the Term time, or out of the Term in time of Vacation, and upon the return of the writ, he may be bailed to appear at the next Cir to be holden for the Forrest, &c. And may also be bailed by force of a writ De homine replegiando directed Custodi Forestæ, d if he be arrested by the Officers of the Forrest for hunting, &c. whereof he stands indicted or presented taken with the manner he finding 12 pledges: but if he be adjudged by the Justices in Cir, and imprisoned he cannot be bailed by that writ De homine replegiando directed Custodi Forestæ, &c. and e if he be unjustly proceeded withal there he hath remedy by Law, as hereafter, when we treat of the Justices Seat, shall be declared. And it is to be observed, that there is a diversity between the writ De homine replegiando directed to the Sheriff, for he is restrained by the Statute of W. 1. cap. 15. to replevy any man imprisoned for the Forrest, being taken with the manner or indicted, but this Statute extends not to the writ De homine replegiando directed Custodi Forestæ, &c.

The fourth Conclusion is, That the offender may be retained by him until he hath found pledges to appear before the Justice in Cir, because (as hath been said) the Court of the Swanmote hath no power of Judicature, but if he offer sufficient sureties, he ought not to be imprisoned.

5. That this Justice in Cir at his Sessions may by the Law of the Forrest proceed upon the presentments or verdias in the Court of the Swanmote, though they be taken in another Court, as the Justices in Cir might have done in like cases, as before in the Chapter of Justices in Cir appeareth.

6. Lastly, Note the issue joyned upon the plea of the Forrester, viz. de injuria sua propria absque tali causa, and allowed by the Court, and the consequent thereupon. And thus much for the case the Reporter saith, that it was said that the party should * not traverse the presentment of the Forresters, Werderors, Regarders, and Agisters: f and herewith agreeth 50 E. 3. and note the presentment was in that case by 36. And herein this diversity is to be observed, that if at the Swanmote the presentment of the Forresters be found true by the Jury concerning Writ or Writson, the offender standeth thereof convict in Law, and

and cannot traverse the same: but an indictment or presentment before the Chief Justice of the Forrest at a Court of the Justice Seat by a Jury, and not found in the Swainmote, may be traversed. 8 E.3. Itinere Pickering 147. a. because it is not presented but by one Jury.

4. This case also giveth just occasion to speak of the Court of the Justice Seat holden before the Chief Justice of the Forrest, aptly called in the said Book Justice in Cir, for so he is, and hath authority and jurisdiction to hear and determine concerning Writ and Wenison, &c. by force of Letters Patents under the Great Seal, whereof there be two, one for the Forrest on this side of Trent, the other beyond. By which Letters Patents the King doth grant unto him Officiū Gardiani Capitalis Justiciarii ac Justiciarii sui Itinerantis omnium & singularum Forestarum, Parcorum, Chacearum, & Warrennarum suarum cum suis pertinenis quibuscumque * ultra Trentam existē, &c. Dantes & concedentes eidem A. B. plenam autoritatem & potestatem tenore prædictarum Literarum Patentium omnia & omnimoda Placita, querelas, & causa Forestarum, Parcorum, Chacearum, & Warrennarum prædictarum tam de Viridi grassu, quam de Venatione, ac de aliis causis quibuscumque infra easdem Forestas, a Parcos, Chaceas & Warrennas eveniē, sive emergē audiendū & determinandū: Habendū, occupandū, gaudendū & exercendū officii prædicti cum pertin per se vel per sufficiē b deputatum suum sive deputatos suos sufficē durante vita ipsius A. B. &c.

And this Court of the Justice Seat cannot be kept oftner then every third year, and other Justices in Cir kept their Courts every seventh year. And (as before other Justices in Cir) it must be summoned forty days at the least before the sitting thereof: and one writ of summons is to be directed to the Sheriff of the County, which writ you shall find hereafter in this Chapter.

There is another writ of Summons directed Custodi Forestæ Domini Regis vel ejus locum tenenti in eadem, and this writ consisteth upon two parts. First, To summon all the Officers of the Forrest, & that they bring with them all Records, &c. Secondly, All persons which claim any Liberties or Franchises within the Forrest, &c. and to shew how they claim the same. c And this Court of Justice Seat hath jurisdiction to inquire, hear, and determine two things. 1. All trespasses within the Forrest according to the Laws of the Forrests. 2. All the claims of Franchises, Priviledges and Liberties within the Forrest, as to have Parks, Warrens, Vbaries, to be quit of assarts, and purprestures, to cut down his own Woods without view of the Forrester, &c. Likewise claims of Acres, Hundreds, Felons goods, Waifs, Strays, Fugitives, and to kill Hares and other Beasts of Chase within the Forrest, or to have a Wood infra metas Forestæ & extra regardum Forestæ, that is to be out of jurisdiction of the Forrest and other Franchises, Priviledges, Liberties, Immunities, Frædoms, &c. within the Forrest, whereof you shall read excellent matter in the Cir of Pickering in 8 E.3. Rot. 3.1. where Guilberd of Acton claimed his Woods extra regardum Forestæ, &c.

This Chief Justice may by the Statute of 32 H.8. make his Deputy (Yet all the writs of Summons ancient and late, are Coram (the Justice Itinerante) aut ejus Deputato.)

Before any Justice Seat be holden, the * Regarders of the Forrest must make their regard by force of the Kings writ, and the regard is obambulare, to go through and view the whole Forrest and every Tailiwick of the same, ad videndum, inquirendum, imbreviandum & certificandum all the trespasses in the Forrest: his office extendeth through the whole Forrest, and every part thereof, to inquire of all offences concerning Writ and Wenison, and of all concealments of any offences or defaults of the Forresters, and all other Officers of the Kings Forrest. He is a ministerial Officer, and is constituted either by Letters Patents of the King, or by the Chief Justice at the Justice Seat, or to be chosen by writ to the Sheriff. The duty of this Officer appeareth by the writ hereafter mentioned.

Before a Justice Seat there ought to be preparations for the same, to the

The Justice Seat.

* The like office Citra Trentam, mutatis mutandis.

Note, anciently this great Officer was created by Writ, as other Justices in Cir were, but now, by the Statute of 27 H.8. c.24. he is to be created by Letters Patents.

See before Cap. Justices in Cir.

a This is to be understood of Parks, Chases and Warrens within the Forrests, as hereafter shall appear. b That is by the Statute of 32 H.8. cap.35.

c Cart. de Forrest, cap.16.

21 H.7. 30.

32 H.8. cap.35.

* A Regarder is derived of the French word Regardare, that is, to view, or see, because he cannot present any thing but upon his own sight and view. To speak once for all, the names of all the Officers from the highest to the lowest, put them in mind of their duty: Con-veniant rebus nomina sępe suis: Nomina sunt notæ rerum.

end, that good service may be done there, & quod Itinera non sint umbrilia, as taking one or two Examples in stead of many.

Breve de Regardocum artic'.

a Forest' de Sherwood. i. Limpida Sylva.

b Cart' de Forest' cap. 7.

c 12 Capit. paten. Inferius.

In this writ nine things are to be observed.

The 12 Chapters above mentioned are these which the Regarders duty is to prepare.

Nota, all these 11. are to be upon his view, *super visum*, and in this respect may be resembled to a Coroner *super visum* at'.

Ordinatio Forestæ. 34 E. 1.

1 E. 3. c. 8. Stat. 1. F. N. B. 164.

¶ Viridarius a viridi, Vert, or Grenhuc, for that his office principally concerneth to look to the Vert, or Grene, and to see it be maintained.

Rex Vic' Not. Salutem. Præcipimus tibi quod Venire fac' certis die & loco quos ad hoc duxerimus providend' omnes Forestarios & Regardatores de a Sherwood ad regard' faciend' in Forest' prædict' ante advent' Justiciariorum nostrorum de Forest'. & loco regardatorum nostrorum qui mortui sunt & infirmi alios eligant. ita quod b 12 sint in quolibet Regard', & nomina illorum imbreventur. Et Forestar' debent jurare quod 12 milites ducent per totam balivam suam, ad videndum omnes transgressionibus quæ exprimentur in c scriptis & capitulorum quæ tibi mittimus, & hoc non omittent pro aliqua re. Debet etiam milites jurare quod facient regard', sicut debet fieri & solet. Et quod ibunt sicut Forestar' eos ducent ad prædicta videnda. Et si Forestar' noluerint eos ducere, vel aliquid forisfact' concealare voluerint, ipsi milites non omittent pro illis quip forisfact' illud videant & imbrevari faciant: & hoc pro nulla re dimittant. Et quod Regard' fiat circa Fest' beati Petri ad Vincula prox' futur'. Teste &c.

1. Videnda sunt omnia Affarta, &c. Affarts.
2. Videndæ sunt omnes Purprestur' in boscis, &c. Purprestures in woods.
3. Videndæ sunt omnes Purprestur' in terris arabil', &c. in Arable.
4. Vidend' sunt omnia Vasta boscorum, &c. Wast of Woods.
5. Vidend' sunt omnes Bosci Domini Regis, &c. The Kings Woods.
6. Vidend' sunt omnes Haie Domini Regis, &c. The Hedges of the King.
7. Item omnes purprestur' & omnia affarta, & omnia vassa, &c. General Woods.
8. Vidend' sunt omnes Aeræ Austurcorum, Espervorum, Falconum, &c. Aeries of Hawks.
9. Vidend' sunt omnes Forge & Minerie, &c. All Forges and Mines.
10. Vidend' sunt Portus maris, &c. The Havens of the Sea.
11. Vidend' est Mel, si quid, &c. Honey.

12. Item milites debent attente inquirere in itinere suo quis habuerit arcus & sagittæ vel balifcas leporarias, burchetas, vel aliquid ingenium ad malefaciend' Domino Regi de feris suis. Balista, or Arcubalista, signifieth a Crossbow.

Leporaria, a harepipe. Burcheta of the French word Berche, a kind of Gun.

Inprimis ordinavimus pro nobis & heredibus nostris quod de transgres' in Forestis nostris de Viridi & de Venatione de cætero fact', Forestar' infra quorum balivas hujusmodi transgres' fieri contigerint, præsentant eadem ad prox' Swanimotum coram Forestar', Viridar', Regardator', Agistator', & aliis earundem Forestarum ministris. Et super præsentationibus hujusmodi ibidem coram Forestar', Viridar', & omnibus aliis ministris supradictis per sacram tam militum quam aliorum proborum & legalium hominum de partibus vicinioribus, ubi transgressionibus sic præsentatæ fact' fuer' non suspectorum, per quos rei veritas plenius inquiretur. Et sic inquisita veritate præsentationes illæ per communem concordiam & assensum ministrorum prædictorum roborentur & sigillis suis sigillantur. Et si alio modo fuit indictament' pro null' penitus habeatur.

This Ordinance being made by the King only without Authority of Parliament, albeit it was in affirmance of the Law, did not bind, and therefore was not executed: and that it was but an Ordinance, or Declaration made by King E. 1. it appeareth expressly by the Statute of 1 E. 3. and by that Act of 1 E. 3. the said Declaration is rehearsed as a Law, the observation whereof is also an excellent preparation for a Justice Seat.

Viridarius is a Judicial Officer of the forest, and chosen in full County by force of the Kings writ. His office is to observe and keep the Assises or Laws of the forest, and to view, receive, and enrol the Attachments and presentments of all manner of trespasses of the forest of Vert and Wenison, and to do equal right and justice as well to poor as to rich. All this and much more you may read in the

the Oath which he taketh before the Sheriff. There be most commonly four Verderors in every of the Kings Forrests.

Agistor, so called, because he taketh beasts to agistment, that is, to depasture within the Forrest, or to fæd upon the pawnage, and cometh of the French word Cyser, to lye, because the beasts that fæd there are there levant and couchant, lyeing and rising. And his office consisteth in agistando, recipiendo, imbreviando, & certificando.

And this Officer is constituted by the Kings Letters Patents; and of these in such Forrests where there is any pawnage, there be four in number.

Gruarii, (of whom you shall read in Forrest Records) is derived from the French word Gruyer, which signifieth generally the principal Officers of the Forrest. Et ipsi Gruarii, vocantur ad similitudinem eorum qui Aucupio Regis in See the Cust. de Norm.

Forestarius is taken for a Woodward not only of the King within his Forrest, but ex vi termini of any subject of his Woods wheresoever they lye: which appeareth by a Writ in Bracton in these words. Rex Vic' Salut. Scias quod propter destructionem quæ facta est in bosco & terra quam A. de N. tenet in dotem in tali villa de B. de N. Provisum est in Curia nostra coram Justiciariis nostris, quod idem opponat Forestarium suum ad prædictum boscum custodiend', ita quod prædict' A. non habeat in eodem bosco nisi rationabile estoverium suum ad arandum & claudendum tantum super eandem terram quam ipse tenet in eodem, &c. But in legal understanding he is taken for a sworn Officer ministerial of the Kings Forrest, and his duty appeareth by his oath, which consisteth on five parts. 1. That he shall be loyal and true to the Master of the Forrest. 2. That he shall truly walk and keep the Office of the Forrestership, and true watch make both early and late both of Wret and Wenison. 3. Truly attach and true presentment make of all manner of trespasses done within this Forrest to his knowledge, and specially within the keeping of his Bailiwick. 4. The Kings counsel, his fellows, and his own, he shall truly keep. 5. No concealment make for no favour, mæd or dredd, but well and truly to behave himself therein.

^a Officers of the Forrest shall not be sworn on enquests out of the Forrest.

^b Messarius is a Power or Harvester, derived à metendo. Fleta lib.2. cap.75. messor. 30 ass.

Thesylis & rapido fellis messoribus æstu.

Alia Serpyllumque herbas contundit olentes.

[Surcharge of the Forrest.] Superoneratio Forestæ, is when a Commoner in the Forrest putteth on more Beasts then he ought, and so surchargeth the Forrest. It is taken from the Writ De secunda superoneratione pasturæ in the same sense when the Commoner surchargeth. Where it is said (tempore coronationis Regis Henrici avi, that is, of H.2.) It is to be known that he was crowned twice, viz. the 20 of December in the first year; he caused his Son Henry to be crowned King the 15 of June in the 16 year of his Reign; Henry his son died the 11 of June in the 28 year of his Reign; after whose death King Henry Fitz Empresse was crowned again.

Desertum, id quod ab hominibus deseritur, & feris relinquitur.

Masura terræ, sunt in eisdem masuris 60 domus plus quam ante fuerunt. Mas de tra, that is, an exchange of Land where there is an house.

Fugacia signifieth a Chase, and is all one with Chafea. See the Charter of Mawde the Empress, giving her self Anglorum Domina, made to Miles of Gloucester, creating him thereby Earl of Hereford, wherein towards the end follow these words. Præcipio quod hæc omnia supradicta teneat de me libere & quiete in bosco & plano, in forestis & fugaciis, in pratis & pasturis, &c. Præterea autem concedo, ut in propriis ipsius prædiis quisque tam in agris quam in sylvis excitet agitetq; feras meas autem ne venetur, iis præsertim in locis quos privilegio circumscripti meo cum pœna præcipio.

That H. 1. made at Woodstock a Park, which was, saith he, the first Park in England. But it is out of doubt that there were Parks in the days of the

D. q

Saxons,

† Agistoris.
Const. & Ass. fo.
rest. ubi sup.

Gruarii.

See the Cust. de Norm.

† Forestarius.

Bracton lib.4.
fo.315. a. & b.
& 231. a.

^a Ordinat. forest.
34 E.1. cap.5.
Regist. 182. F.N.B.
^b Assisa & consuet.
forest. 6 E.1. c.16.
Virgil.

Regist. & F.N.B.
126. a. c. & c. Sur-
charge.
Mag. Cart. cap.5.

Domesday.
Sudlex Cicesfr.
& sape.
Carta Matildis
Imperatricis Milo-
ni de Glocest.

Int. leges Canuti
cap.77. Lamb.

Johannes Rossus
& alii post eum.

Deorfald. Falda.
ferina.
Domesday.
Chent. Certh.
Ib. parcus sylvatic'
bestiarum Devon-
scire. Winchelere
Hertfordscire. Be-
linton.
Assis. forest. 6 E. 1.
cap. 1.

Ibid. 8 E. 3. trinete
Picker.
Guilbert of Acons
case.

Ib. Artic. 11.
Camia concihet
spatium octo pal-
marum in longitu-
dine. Dorsetclaus.
An. 16 R. 2. m. 30.

21 E. 3. 48. a. In
Scire fac.
Vid. 25 E. 3. fo. 43.
Nicholas Gowers
case.
Vid. Regist. 253. b.
Br'e de inquiren-
do de libertatibus
allocatis.

Saxons, which were called Deorfald of two Saxon words of Deor for Dær, and Fald, for a place inclosed with pale, hedge or wall. And in the Book of Domesday often mention is made by express name de Parcis. Parcus bestiarum. Parcus sylvaticus bestiarum.

Haia taken for Parcus of the French word Heye for an inclosure, Rot. Inquisit. 36 E. 3. in Scacc' de forest'.

¶ Haia de Kingeslie in Hamshire.

¶ Hulmus, i. Insula an Isle. ¶ Bercaria, Vid. 1 part. Instit. Sect. 1. ¶ Mastivus mutulatus is a Mastiffe expeditated or lawed, and not mulled: for no Dog by the Law of the Forrest ought to be mulled. Mutulatus cometh of the Verb Demutulo, i. demembro. ¶ Bissa, i. Cerva, of the French word Biche, for a Hind. ¶ Mureleges, à legendo mures, of getting of Pice, a Wilde Cat. ¶ Testones of the French word Tesson, for a Gray, Black, or Badger. ¶ Befonus of Bison a French word for a wild Oxe.

¶ Ham, Saxonice domus, home, sometime Villa, as Milcham olim Mildham, because the air was mild and temperate.

¶ Hue and Cry, Hutesium & Clamor, the one being an exposition of the other, each of them signifying, crying and shouting; verba dolentis. And Hue is derived of the French word huier and crier. But Hue and Cry by the Forrest Law is not to be made for trespass in Wert, but in Venison only. This Hue and Cry cannot be pursued but only within the bounds of the Forrest; and the offence must be committed within the Forrest, and not within the purlieu. And this Hue and Cry may be made by any of the Kings Ministers of the Forrest, for any of them may arrest the malefactor, and none can make Hue and Cry but he that may arrest in that case, and cannot. And so are the general words, Si quis viderit, &c. to be understood.

Si quis viderit, &c. If any Township or Village follow not the Hue and Cry, they shall be amerced at the Justice Seat.

¶ Taken with the Mayneer, à Manu is in 4 kinds, viz. Dog-draw, that is, drawing after a Dær which he hath hurt. Stable stand, viz. at his standing with any Knife, Gun, or Bow, or close with Greyhounds in his Leash ready to shot or course. * Back-bear, that is, carrying away the Dær which he killed. Bloody hand, that is, when he hath shot or coursed, and is imbued with blood.

But what if iniustice be done at the Justice Seat? For example, as if a claim be made of any liberty at a Justice Seat, and is there allowed, what remedy hath the party grieved in this case? which I do the rather propound, because I find not this doubt resolved in any of the readings upon this Statute of Carta de Foresta, or in any that have written of the Forrest Laws. And I find this question resolved by a notable Book case in 21 E. 3. agreeable with the Register and other Books; where the case was this. A. & B. before the Justices of the Forrest of Pickering claimed to have within the Wood of E. within the same Forrest a Woodward proper, and also to have the windfalls in the same Wood, which claim was allowed by the said Justices, where in truth the said claim was false, to the disherison of the Commoners there: for that the Commoners within the said Town of E. had the choice of the said Woodward, and all the windfalls for their reasonable Coffers as belonging to their freehold. Whereupon on the behalf of the Commoners the Record before the Justices of the Forrest was removed by Certiorari, (which in the Forrest Law is called a Venire facias Record) into the Kings Bench (which Court is above all Cires) and two of the Commissioners, viz. Robert de Scarburgh and Robert Wich sued out a Scire fac' upon the said Record against the said A. & B. &c. And they declared upon the said Writ that all the Commoners had the liberties aforesaid: Exception was taken to the Writ, that the grievance is as well supposed to others, as to those two which were plaintiffs in the Scire fac'. Whereunto it was answered, that although the grievance was to others, yet those two that would complain might maintain this suit. And if the others be of Record with A. and B. yet these two may sue, and these two might have joined in Assise. And there it is holden, that if a profit be

be granted to a Comminalty out of the Forrest; the claim ought to be made by them all, but otherwise it is within the Forrest, where every one shall have his Action by himself for that which belongs to him; and in the end the Writ was adjudged to be good. But in this case somewhat is implied, for by the Law of the Forrest, when a claim is made of any liberty within the Forrest, although no issue be joined thereupon, yet the entry is, Et quia videtur Justiciariis quod expediens & necesse ad inquirendum super præmissis rei veritatem antequam ad allocationem clamei prædicti procedatur, inquiratur inde veritas per ministros ejusdem foreste: and sometime tam per ministros foreste quam per alios liberos & legales homines, at the discretion of the Justices for the advancement of truth: and accordingly the Forresters, Verderers, Regarders, and Agisters do enquire thereof. Also if a claim be made before the Justices of the Forrest, whereupon there groweth difficulty, or if a demurrer in Law be thereupon joined, the Justices may adjourn the same into the Kings Bench to be there adjudged, and then the Entry is, Ideo quoad clameum prædicti pro eo quod Justiciarii prædicti nondum advisan- tur de judicio inde reddendo, datus est dies eidem H. coram Domino Rege (in tali retorn) ubicunque &c. de audiendo inde judicium, &c. Et dictum eidem H. quod interim sequatur bre de Venire fac' inde recordum, &c. Postea Dominus Rex mandavit præfat' Justic' bre suum in hæc verba. * Edw. Dei gratia Rex Angliæ, &c. Dilecto & fideli suo Ricô de Willowbye salutem. Cum vos & socii vestri Justiciarii nostri ad placita foreste, &c. tenend' assignat quoddam clameum de diversis libertatibus per dilectum & fidelem nostrum H. de Percy coram vobis & sociis vestris prædictis in eadem forest' fact' propter quasdam difficultates in eodem clameo contenti coram nobis adjornaveritis, ut accepimus, Vobis mandamus quod si ita est, tunc omnia clamea prædicta nec non recorda & process. inde coram vobis habita coram nobis ubicunque fuerimus in Anglia sub sigillo vestro sine dilatione mittatis juxta adjornamentum prædictum hoc bre nobis remittentes. Teste, &c. Anno 12 E. 3.

Virtute cujus Brevis clameum prædicti, nec non recordum & process. prædicti mittuntur coram rege ad diem prædicti una cum brevi prædicto.

Postea Dominus Rex mandavit præfato R. de W. quoddam aliud bre claus. in hæc verba. Edw. &c. dilecto & fideli R. de W. Salutem. Cum vos & socii vestri Justiciarii nostri ad placita forest' in forest' H. com' Lanc' de Pick' in Com' Eborum tenend' assignat quædam claus. de diversis libertatibus per dilectum & fidelem nostrum H. de Percy coram vobis & sociis vestris prædicti in eadem forest' habend' fact' propter quasdam difficultat' in eisdem clameis interveniend' coram nobis adjornaveritis, & quædam alia clamea sua similiter ibidem de quibusdam aliis libertatibus fact' allocaveritis, prout accepimus; Nos volentes tam super dictas libertates sic adjornat, quam super al' allocat' certis de causis certiorari, vobis mandamus quod si ita est, tunc omnia clamea præd' nec non record' & process. inde coram vobis, & sociis vestris prædicti habit' coram nobis ubicunque fuerimus in Anglia sub sigillo vestro sine dilatione mittatis, & hoc breve, ut hiis inspectis ulterius fieri faciemus, quod de jure fore viderimus faciend'. T. E. Duce Cornub. Com. Cestrie filio nostro charissimo Custod' Angl' apud Berkhamstead Primo die Februarii anno regni nostri 13. Virtute cujus brevis claus. præd' tam adjornat' quam allocat' mittuntur coram Rege una cum bri prædicti, &c.

By all which cases the former question is resolved, which case and consequences thereupon is worthy of serious consideration.

Nicholas Gower was indicted for that he killed the Kings Game in the Kings Forrest, when he was the Kings Steward of the same, and also had taken ransom for Indictments, which Indictments were removed coram Rege, and the Steward was put to answer thereunto.

Hugo le Despencer Justic' Forest' citra Trentam mandavit quoddam Breve suum Vic' Wigorn' retorn' coram Domino Rege in crastino sancti Johannis Baptiste prox' præterito, &c. in hæc verba. Hugo le Despencer Justic' Forest' citra Trentam Vic' Wigorn. Salutem. Mandamus vo-

28 E. 3. Itinere Picker. Henry de Percys case, which depended in advilement for difficulty four years before R. de Willowby, and other Justices of the Forrest. Venire fac'. Record. Certiorari. * A Certiorari before Judgment out of the Chancery return'd into the Kings Bench directed to R. de Willowbie (being the ancient primary Judge) only, because he only hath the keeping of the Records.

27 E. 1. coram Rege Rot. 13. Wigorn'.

Obferve well the parts of this Record, and a ready way to help the King to his fines after the Cir of the Forrest be ended.

On the other side it is demanded, what if a man make a just, and lawfull claim to certain liberties at the Justice Seat, and cannot obtain the same to be allowed by the Justices of the Forrest, what remedy for him that maketh such claim.

* Whereunto the answer is, that he shall have a Writ De libertatibus allocandis, directed to the Justices of the Forrest, which Writ doth appear in the Register

^a And any person that is to make any claim may the first day of the Cit. either make it in person or by Attorney, F.N.B. 26. g. And he that appears upon a presentment or indictment taken before the Justices in Cit. and traverseth the indictment, may after appear by Attorney. See before Cap. Justices in Cit. the Writ in the Regist. 19. a. W. 2. cap 10.

b And the entry is, A. B. po: lo: suo T.B. vel L.N. de omnibus placitis seu querelis motis seu movendis, & ad omnes libertates calumniand, prosequend, & defendend durante Itinere isto: whereby it appeareth in what generallity an Attorny may be made.

And this agreeth with the Register, f. 19. b. by 5 kinds of Writs which are worthy of observation, viz. 'Breve de clameo admittend' in itinere per Attornatum primo die itineris, &c. 'De libertatibus exigendis in Itinere.' 'De Attornat in omnibus placitis & querelis in Itinere, & ad libertates calumniandas: 'Aliter in omnibus placitis & querelis in Itinere juxta formam stat de Merton cap. 10. Glouc. cap. 8. & W.2. cap. 10. 'Aliter de Attornatis, &c.

And these Writs are to be granted ex merito Justitia, without any denial, as well to the Justices in Cir of the Forrest, as other Justices in Cir for the admitting of Attornies. Vid. 2 part of the Institutes, W.2. cap.10.

And upon search made I find the like Writ beginning, Omnibus Ballivis & fidelibus suis, &c. in the Cit of Pickering, 19.b. for the Prior of St. Johns of Jerusalem to make an Attourney before the Justices of the Forrest.

But what if the Justices in Cir give an erroneous judgment, &c. what remedy hath the party grieved? He may have a Writ of Error out of the Chancery returnable into the Kings Bench, and there Justice shall be done.

d If a man make his claim by grant or prescription, and he or his Counsel mistaketh his right title in some material point, so as the claim is found against him, it is good for him that his true title be found by the same verdict specially, for then may the party by petition make a fine and pray licence to make a new claim, and thereunto he ought to be admitted.

And concerning claims it is specially to be observed, that by the Forrest Law a grant made of a privilege within the Forrest to all the Inhabitants being Freeholders within the Forrest or such other comminalties not incorporated, is good.

e If a man make a false claim by claiming more then he ought, he shall be fined for his false claim, but that which he ought to have shall not be seized: As the Prior of York claimed by Charter to have Tithes of all Wenison, tithes in carne quam in corio, where he ought to have it in corio, for which he was fined and enjoyed it in carne.

In the Cir of Pickering holden befoze Richard' de Willowby, Robert de Hungerford and John de Hambury Justices in Cir for the Forrest of Pickering, Anno 8 E. 3. a claim was made by Thomas de Pickering and Margaret his wife, viz. Habere in dominico bosco suo de Locton Woodwardum ad custodiendum Boscum suum, & quod nullus in eo amputet aut prostrare faciat arborem aliquam sine voluntate sua, & quod ipsi in bosco suo possunt prostrare & dare pro voluntate sua arbores virides & siccas, & dare & vendere arbores suas pro voluntate sua sine visu Forettariorum, &c. and prescribed in the same in the right of the said Margaret, where this prescription was enquired of and allowed to be good in Law, but it was found, as to the taking of the trees without the view of the Forester, to be untrue.

* The like prescription made by Sellinger to take and cut down Timber trees within his own Woods within the Forrest of Hay in the County of Hereford without

* Regist. 162. and
F.N.B. 229. b. &
230. a. & In
communis de
Scaccar' de Anno
14 E. 1. de liber-
tatis allocandis
& vide L. Ockham
f. 47, 48.
a 8 E. 3. Itinere
Pick. 148. a.
b 8 E. 3. Itinere.
Pick. the case of
the Prior of
Rocella. Reg. 157b.
In the case of

c. Regist. 19. b. 1. 1

Rowland.
Liberty Center de
Rowland is called
Vid Reg. 22-2-2

2 E.3. fol.29.
Lib.9. fol.28. b.
Labbor de Strata
Marcellas case.
d 8 E.3. Itin.Pick:
fol. 164. the case
of William of Per-
say and Petronilla
de Kinthorp.
8 E. 3. Itin' Pick
f.22. Itin' Lanc'
fol. 4.
8 E.3. Itin' Pick
f.15. Lanc' f 64.

Pickering's cafe.

* In Cur^a Scaccarⁱ
Coram Edw. San-
ders Capital Bar:
& aliis Baronibus
tempore R. Eliz. of
the report of Po-
pham Chief Justice.

Conſtit. & Aſſiſ.
Foreſt. ubi ſup.
A man may claim
to have dogs in-
expediate and
hounds within the
Forreſt.

Regiſt. 257. a.
F.N.B. 226. f.
2 E.2. trm's. 9.
Ad quod damnum.

Paſch. 5 Jac. Reg.

Vid. Reg. 258. a.
Bowland is called
Libera Chafea de
Bowland.

Temps E.1. tref-
pals 249. the caſe
is to be under-
ſtood of a Forreſt
where Forreſters
(there named)
be, for every For-
reſt is a free
Chafe, but not
converſo. 43 E.3.8.
Vid. Dier 6 E.6.
fol. 70.

without the view of the Forreſter, and upon argument and long adviſement it was adjudged, that the preſcription was good notwithstanding the Ordinance of 34 E.1. and the Statute of 1 E.3. cap.2. And the reaſon was, becauſe that Statute was but in affirmance of the Common Law of the Forreſt, and againſt ſuch a Statute a man may preſcribe. And that 34 E.1. was but an Ordinance and no Statute, ſee F.N.B. 167.a. Regiſter. Which judgment was agreeable to Pickering's caſe abovesaid, and is of great conſequence: for the Statute of Carta de Foreſta and moſt of the Statutes concerning Forreſts are likewise declarativa antiqui juris; and therefore, as againſt the Common Law, ſo againſt them a man may preſcribe upon a juſt and reaſonable cauſe; but if they were introductiva novi juris, then no preſcription can be made againſt them, unleſs he hath another Statute to preſerve the liberties.

And if a man hath a Wood in a Forreſt, and hath no ſuch preſcription, the Law doth appoint him a means to ſell both Wood and Timber, ſo it be no preſudice to the game, but ſufficient is left beſides, and that is, by a Writ of Ad quod damnum, upon return whereof the King doth licence him, &c.

By the Kings commandment under his Signature and Signet, all the Judges were aſſembled about certain queſtions concerning his Forreſts of Leiceſter in the County of Leiceſter, and of Bowland in the County of Warwick, to be moved to them by the Attorney of the Duchy. And the firſt queſtion which was moved, was, whether the ſaid Forreſts were Forreſts in name only, or in Law: which being queſtio facti, the Judges could give no answer: but by way of diſcretion they reſolved, that if they were Forreſts in Law, it muſt appear of Record, for there be certain incidents inſeparable to every Forreſt, viz. Courts of Record, and Officers of Record, Courts of Record, as Courts of Attachments, Swanimote, and Juſtice Seats. Officers of Record, as Forreſters, Verderers, Regarders, Agiſters, &c. who are made (as it appeareth beſore) by matter of Record, &c. but appellation or naming of them Forreſts in offices, pleadings, grants, or other conveyances, are no proofs, that they be Forreſts in Law.

2. It was reſolved by them, that if they be but free Chales and no Forreſts in Law, that then the owners of Woods within ſuch Chales may cut down timber or wood growing therein without view of any Officer, or licence of any; but if they cut down ſo much as they leave not ſufficient covert, and huſe wood for the game, they ſhall be puniſhed at the Kings ſuit. And ſo it is if a common perſon hath liberty of Chale in other mens Woods, the owners of the Wood cannot cut down all the Woods, but leave ſufficient for covert, and huſe, as hath been accuſtomed, no more then the owners of Woods in which others have common of Cuſtomers, can deſtroy the whole Woods, but leave ſufficient for the Cuſtomers.

3. And being demanded whether in the Kings free Chales a man might have common and ſeeding for ſheep, and warren by preſcription or grant? It was reſolved, clearly they might, but they muſt not ſurcharge to the prejudice of the Kings game, but the owner of the ſoil within ſuch a free Chale cannot erect a Warren without a Charter from the King. And it ſeemeth to me that by preſcription a man may have common for his ſheep within the Kings Forreſt; for, firſt, I find no authority in our books (that I remember) againſt it; and that generally a man may common in a Forreſt, it appeareth by Carta de foreſta, Cap.1. 33 E.1. Stat.5. 34 E.1. cap.6. And if for common in general, eſpecially for common appendant ſo much favoured in Law, and particularly for ſheep, as well as for Hozles and Mares. 12 H.3. Common 25. F.N.B. 230. a. And to conclude this point, the Prioreſs of Wickham preſcribed to have Common in the Forreſt of Pickering, pro omnibus averiis ſuis, except caprellis, beſore the Juſtices in Cir in 8 E.3. Rot.31. which being found to be true was allowed to her, &c. and ſuch a preſcription may have a lawful beginning by the Kings grant.

4. That he that hath a Warren within a free Chale may build upon his own inheritance within his Warren a convenient ledge for preſervation of his game. And Popham Chief Juſtice beſore all the reſt of the Judges cited the ſaid caſe of Selenger adjudged in the Exchequer.

Some

Parks, and Warrens, and their ministers to deal therein so far as it may concern the preservation and maintenance of the Game, in respect of the Shades, coverts, pawnage, and such like for the Deer. And therefore it is resolved by all their opinions, that the Lord Treasurer of England and Court of Exchequer may not sell any Woods or Coppices within any the Kings Parks, Forrests, or Chases, (except windfals, rosfals and mæ dead and sear trees) without the privy and allowance of the said Warden, and Chief Justice, and Justice Itinerant, within whose jurisdiction it is: Nor may cut down the dead and sear trees, nor carry them or windfals or rosfals away, but at fit times, and by the view of such as have charge of the Game, whereby it may be seen unto, that the same may be done at fit and convenient times: and that no trees, other then those that be dead and sear: and merely windfals and rosfals, may be thzown down or taken away without the privy and allowance of the Warden, and Chief Justice, and Justice Itinerant of his Majesties Parks, Forrests, or Chases.

And as for the Warden, and Chief Justice, and Justice Itinerant, and the Keepers and other ministers of Parks, Forrests, and Chases appertaining to the King, they may not cut down any trees for new paling or railing, or for repair of Lodges, without the Warrant and allowance of the Lord Treasurer of England for the time being: but timber needful for mending of small defects in old pales or rails that are broken, so as the same do not exceed two or three timber trees in any one Forrest, Park, or Chase, in any one year, they may be permitted to take of trees in places fit, without making wast thereof, or any spoil or prejudice to the Kings inheritance, making the Kings Surveyor of the Woods speedily acquainted, who is to see that the same hath been accordingly well imployed: and needful howse also in places fit, and times seasonable the Keepers may take for the Deer, not cutting down the lims or great boughs of the trees. And therefore it is ordered by this Court, that from henceforth where it shall be thought requisite to sell any of the Kings woods or Coppices within any his Parks, Forrests, or Chases, that a Writ or Commission in nature of an Ad quod damnum shall be directed unto the Warden and Chief Justice, and Justice Itinerant within the Forrests, within whose government the same is to be done, to enquire and certifie what number of trees and what Coppices may be sold, and in what places with least prejudice to the Kings Game; and that upon the return thereof, the sale shall be made of such trees and Coppices, as upon such Certificate shall be thought fit to be sold. And in like manner it is ordered, that for the new paling, and new railing, and new building of Lodges in any place within or about any his Majesties Parks, Forrests, or Chases, and the great repairs of old Pales, Rails, or Lodges in or about the same; that it is to be done upon Certificate from the Warden and Chief Justice, and Justice Itinerant, and the Surveyor of his Majesties Woods within whose Jurisdiction it is, by Warrant from the Lord Treasurer of England for the time being.

It is very observable, that if any Act of Parliament hath been made against any of the Articles of the Statute of Carta de Foresta, by the Act of Parliament of 42 E. 3. the same is made void, and by the Statutes of a Confirmationes Cartæ all judgments given against any of the points of Carta de Foresta, shall be holden for void. And where H. 2. Fitz Empresse claimed that he might make Forrests not only within his own Woods and Grounds, but in the Woods and Grounds of his Subjects, and thereupon made divers such Forrests within his own and other mens Woods and Grounds: whereupon some Readers and others that have followed them are of opinion that H. 2. might De jure do that which he did. But this Act of Carta de Foresta, which is but a declaratory Law restoring the Subject to his former right, is directly against that conceipt, in these words. *Inprimis omnes Forestæ, quas Henricus avus noster afforestavit, videantur per bonos & legales homines; & si c. boscu aliquem alium quam suum dominicum afforestaverit ad damnum illius cujus boscu ille fuerit, statim deafforestetur; & si boscu suum proprium afforestaverit, remaneat foresta, salva d. communia de herbagia & aliis in eadem foresta illis qui prius eam habere consueverunt.* To the same effect is the

42 E. 3. cap. 1.
a Confirm. Cart.

24 E. 1.

b Cart. de foresta.

cap. 1. & 2.

c This is an Act of restitution, for if the King might have made a Forrest in other mens Woods, then could not the owner have felled down his own woods without view or license, & sic ad damnum illius, &c.
d Nota, all manner of Commons are saved.

third Chapter. Neither could H.2. or any other King have made or raised a free Chase, Park or Warren for himself in any of the grounds of the subjects: for it is truly said in Pl. Com. that the Common Law hath so admeasured the Kings prerogatives, that they should not take away, nor prejudice the inheritance of any. But we agree, that all the Lands of the subject are originally derived from the Crown: And therefore when the ancient Kings had the most part in their own hands, or at least great Desarts, waste and woody grounds for want of habitation, they might make what Forrests it pleased them therein, which may be a reason and cause of a lawful beginning, and therefore a Forrest may be by prescription good in Law over other mens grounds. But the King in his own grounds may make a Forrest at this day, which is also proved by these two Chapters, for such Forrests are thereby saved and enacted to stand.

Pl. Com. Seignior
Berkeley's case. fo.
236.

King H.8. intending to make a Forrest about his house at Hampton Court assigned and limited a certain Territory of grounds for nourishing and generation of Beasts of Venery, and Fowls of Warren, extending over the Lands and Grounds of divers and many Freeholders, and Copholders within the Parishes, Townships, and Villages of Eastmulse, Westmulse, Walton, Elther, Weybridge, and part of Cobham: and finding that he could not erect either Forrest or Chase over other mens grounds without their consents, did agree with the Freeholders and customary tenants, as by his Indenture bearing date the first day of October in the 29 year of his Reign, between him on the one part, and Sir Richard Page Knight, Thomas Henage Esquire, and other the Freeholders and customary Tenants in the Towns and Villages aforesaid of the other part, wherein the King doth name it (ad faciendum populum for the easier passage) Hampton Court Chase. But afterwards (in close words in several places) that it should have all such and like Liberties, Jurisdictions, and Preeminences, Laws, Statutes, Officers, &c. * as any Chase or Forrest within this Realm had, &c. And all offences done within the same, should be punished as if the same had been done within any Chase or Forrest within this Realm. And the King did thereby covenant and grant, that the Freeholders and Copholders aforesaid might sell and take their Woods, Groves and Coppices, at their will and pleasure without any view, &c. and to make their hedges and fences about their Corn, &c. to keep out the Deer, &c. And (for recompence to both Freeholders and Copholders, &c.) that the third part of the free rent of every Freeholder should be deducted, and the moiety of the fine of the heir of every Copholder should be also deducted, &c. which Indenture and all the covenants therein being recited, it is enacted by authority of Parliament accordingly. By which Act and divers general clauses referring to Forrests, the King intended to have it a Forrest. But hereby it plainly appeareth both by the Kings said Indenture, and by the judgment of the whole Parliament, that the King could neither erect any Chase or Forrest over any mans grounds without their consent and agreement. And yet King H.8. did stand as much upon his Prerogative as any King of England ever did.

31 H.8. cap. 3.

* Nota.

But to joyn this new with some that is ancient. In Rot. Parl. anno 18 E. 1. there is a notable Record in these words:

Rogerus Episcopus Coventr. & Lichf. queritur contra Rogerum Extraneum & socios suos Justic' Domini Regis de Foresta in Com. Staff. Eo quod seifs. in manus domini Regis boscos ipsius Episcopi de maneriis suis de Can-nock & Ruggeleghe, &c. Rogerus & alii Justiciar' veni' & dicunt, quod in Itinere suo presentatum fuit per Viridiar', Forestar' & alios fideles Domini Regis, quod predicti bosci super Dominum Regem & ejus progenitor' per ipsum Episcopum & predecessores suos purprestabantur. Et eo quod licet eis Justiciariis in Itineribus suis purpresturas factas infra metas foresta Domini Regis in manus Domini Regis seisire, ideo seisire fecerunt, &c. Et Episcopus bene concedit quod sunt infra metas foresta: Sed dicit quod Rex Ric' per cartam suam Dat' 4 die Decembris Anno regni sui primo dedit Hu-

Petitio Episcopi
Covent. & Lichf.
contra Justiciarios
Foresta.

Purprestur'.

Gnowshall.

Nota, in boscis deafforestatis per cartam licet fugare, & voluntatem inde facere; a fortiori, in boscis deafforestat' virtute Actus Parl. de Carta de Foresta.

38 H. 6. fo. 10. acc.

Adjoined into Parliament.

Deafforestation per Cart. Nota.

* Nota, infra metas forestæ, &c. tamen extra forestam. Foresta de Cannock.

See hereafter pag. 307.

1 E. 3. ca. 1. Stat. 2. Rot. Parl. 1 R. 2. nu. 61.
5 R. 2. 84.

goni tunc Episcopo Coventr. & Lich. predecessori suo & successoribus suis dicta duo maneria cum Ecclesiis, hundred', & omnibus aliis libertatibus. Et per aliam cartam dat' 30 Novemb. Anno regni sui primo concessit dicto Hugoni quod omnia maneria sua, terræ & omnes homines sui & feod' Ecclesiæ de Covent. & Lichf. de Cestr. & Salop, & de Gnowshall & omnium Ecclesiarum suarum, libera essent & queta de foresta, & de placitis forestæ, de vastis & assartis & regardis forestæ, cum multis aliis libertatibus in eisdem cartis recitatis, &c. Virtute quarum Cartarum, ipse & omnes predecessores sui a tempore consecutionis earundem Cartarum solebant fugare in dictis boscis, & voluntatem suam inde facere, &c. Et petit quod dominus Rex, &c. Et prædict' Justic' dicunt quod Dominus H. Rex pater Domini Regis nunc fuit in seisinâ dictorum maneriorum & boscorum. Et scrutatis Rotulis, & Brevibus Scaccarii invenitur primum breve regis H. An. regni sui 14 Vic. Staff. direct', & quod sciat, quod reddidit A. tunc Episcopo Covent. & Lichf. dicta maneria, &c. Item 2 alia brevvia Baronibus de Scaccario direct'. quod computent Vic. Staff. 30 s. 6d. pro med' pro anno 14. Item comp. &c. 61 s. pro Anno 10 pro dictis maneriis, &c. Et præd. Justic. dicunt, quod patet per easdem Cartas quod carta per quam Episc. clam. esse quietus de foresta, &c. data fuit & facta ante cartam per quam dictus Rex R. dedit Episcopo, manerium & boscos prædictos, per quod dicunt quod prædict'. Episcopus non potest clamare dictos boscos esse quietos, &c. per formam dictæ Cartæ factæ ante donationem dictorum boscorum: ob quod datus est dies dicto Episcopo, &c. in unum mensem ad Parliament. &c. Postea ad Parliamentum nunc, &c. venit prædict'. Episc. in propria persona sua, & reddidit Regi dictos boscos ut jus ipsius Regis. Et idem Dominus Rex ex gratia sua concessit & dedit eosdem boscos prædicto Episcopo per easdem metas, bundas, & divisiones per quas ipse & prædecessores sui a tempore consecutionis Cartæ prædictæ Richardi Regis boscos illos tenuer', &c. Et quod habeant & teneant liberos ab omnimodis placitis forestæ, &c. * Et quod nec Justiciari' forestæ seu Forestar' Viridar' & Regardatores, seu alii ministri quicunq; se intromittant infra metas supradictas licet sint infra metas forestæ antiquas de Cannock. Et pro hac, &c. idem Episcopus cognovit se teneri Domino Regi in mille libris sterling.

Observe well this Record, and the parts of the same. And it is to be known, that where divers perambulations were made in the reign of H. 3. E. 1. and E. 2. that all these perambulations and others that should be made (albeit there be no Charters thereof now extant) are established and made good, both by the Statute of 1 E. 3. ca. 1. Stat. 2. in print: and by an Act of Parliament in 1 R. 2. nu. 61. in the Roll of Parliament, and not in print; and by another Act of Parliament 5 R. 2. nu. 84. not in print. For albeit it be to be presumed that Charters have been made according to the Perambulations; yet forasmuch as time wears out many things, if Charters should now be required, many places should become Forrest again; which now are in peace and deafforested.

The form of the perambulation of a Forrest is, Perambulatio facta in Com' Eborum de foresta de G. die Anno Regis, &c. apud E. coram A. B. C. D. Justiciariis Domini Regis ad dictam perambulationem faciend' assignatis per sacramentum F. G. M. P. N. S. &c. Qui dicunt super sacramentum suum, &c. And so set down the metes and bounds of the Forrest, shewing what is within the Forrest, and what to be extra forestam secundum tenorem Magnæ Cartæ de Foresta, eo quod afforestata fuerit post coronationem Domini Regis Henrici Regis 2, &c. In cujus rei testimonium, &c.

Nota,

Nota, the Charters be general and hoze to this effect. Rex omnibus ad quos presentes literæ pervenerint, Salutem. Sciatis quod volumus & concedimus pro nobis & heredibus nostris, quod perambulationes factæ coram A.B. C.D. ad hoc assignat per præceptum nostrum de forestis nostris in Com. Eborum de catero teneantur & observentur per metas & Bendas contentas in eisdem perambulationibus, quarum tenor de verbo in verbum sequitur in hunc modum. And rehearse the whole perambulation.

A long complaint in Parliament against Forresters, for afforesting of mens purlieus, for undue trial and for their extorsions, so long here to be rehearsed, but woorth to be read, with a prayer that the great Charter may be kept, and that all men may enjoy their purlieus according to the perambulations made in the Reign of King E. 1. whereunto the King answered, [The King would the great Charter to be kept, and that such as will complain in the right of their purlieus, may have Writs out of the Chancery.] See Rot. Parl. 50 E. 3. nu. 80. & 1 R. 2. nu. 60.

Purlieu containeth such grounds which H. 2. R. 1. or King John added to their ancient Forrests over other mens grounds, and which were disafforested by force of the Statute of Carta de Foresta, cap. 1. & cap. 3. and the perambulations and grants thereupon. And is derived from a French Adjective and a French Noun, viz. Pur which signifieth clear, entire, and exempt, and Lieu, that is, a place entire, clear, or exempt from the Forrest. And both of these derived from the Latin Adjective and Noun, viz. purus locus; and in this sense the Civilians called that purum locum qui sepulchrum religioni non est obstrictus. And the perambulation whereby the purlieu is deafforested is called in French Pourallee, i. perambulatio, so as the purlieu and pourallee are two distinct things, and * purlieu is the right name of the place deafforested.

By this it appeareth that Chases that never were any Forrests cannot have any purlieu, and consequently the case in 16 Eliz. Dier 326. 327. is mistaken, for the Chase of Whaddon never was any Forrest. Whereby it may be observed, how necessary the true derivation of words is, according to the example of Littleton, as in divers parts of the first part of the Institutes appears.

By this deafforestation the owners of the grounds within the purlieu may at their will and pleasure sell, cut down, eradicate, and stub up all the Timber, Woods, and Underwoods, convert their Pastures, Meadows and other Grounds to arable, inclose them in with any kind of inclosure, build and erect new edifices upon the same or any part thereof, and to dispose and use the same after the disafforestation, as they never had been afforested.

And where some have conceived, that quoad to the owners of the soil the purlieu is disafforested, but not as to others, but as to them it should remain a Forrest, by reason of these words in the first Chapter, ad damnum illius cujus boscus ille fuerit, those words were added to shew the unlawfulness of the afforestation, because it was ad damnum, &c. as hath been proved before. And then these men must make a diversity between a deafforestation by force of the first Chapter of afforestations in the Reign of H. 2. And deafforestations made by force of the third Chapter of afforestations in the Reigns of R. 1. and King John, for there the clause of ad damnum is omitted, and therefore those afforestations are utterly made void against all men.

The Statute of Carta de foresta hath been above 30 times, and lastly in 4 H. 5. confirmed and enacted, and commanded to be put in execution, and we find no authority in Law that we remember against our opinion herein; therefore we proceed and do hold, that in any purlieu a man may as lawfully hunt to all intents and purposes within the purlieu within his own grounds, as any other owner may do in his grounds that never were afforested at all.

Some have endeavoured to limit the purlieu man to hunt by custom or prescription, but all the said Statutes were made within time of memory against which they cannot prescribe. Some endeavour to maintain it to be by Forrest Law, but it is questioned whether there be any such Forrest Law in that point, for

Rot. Parl. 22 E. 3. nu. 25.

Purlieu what it is, and whereof derived.

33 E. 1. Stat. 5.

See the first part of the Institutes. Sect. 170.

Quod non legitur non creditur: but to conclude this point, no Forrest law can stand against laws enaged by Authority of Parliament. Others think, that the said Statute of 33 E. 1. Stat. 5. or some other Statute in the reign of E. 1. E. 2. or E. 3. do in some sort restrain their hunting, which is utterly denied, that they are restrained by any such in any of the said Kings times; but if any such Statutes were, they are, being contrary to the Statute of Carta de Foresta, repealed by the Statute of 42 E. 3. ca. 1. And all the Statutes or Assises, either that of Woodstock in the reign of H. 2. or any other in his time, or in the reigns of R. 1. or King John are all abrogated by the Statute of Carta de Foresta made in 9 H. 3. ca. 1. & 3. as to the Deafforestations, &c. And the Statute or Assise of Woodstock doth extend to Deafforestations before, and not after, the words thereof being, Nulles faciat aliquam installationem inter foresta & holcos, &c. p ipsam vel progenitores suos deafforestatos. And for the same reason the Purliu man may keep his dogs within the purliu unexpeditated, and saving the wild Beasts do belong to the purliu man racione soli, so long as they remain in his grounds, he may kill them, for the property racione soli is in him; so as hereby concerning purliens, and by the resolution of the Judges concerning Chases, it appeareth that the makers of the Statute of 22 E. 4. mistook the Law in both of them, viz. concerning Chases and Purliens, but the Statute being in the affirmative worketh no prejudice to any. And if he chase them with Greyhounds, and the Beasts of the Forrest doe flee towards the Forrest for their safety, if the owner pursue them to the bounds of the Forrest, and then call back his dogs, and do his endeavour to call them again from the pursuit, although the dogs follow the Chase in the Forrest, and kill the Kings Deer there, this is no offence, so as the owner enter not into the Forrest, nor meddle with the Deer so killed. But if the dogs fasten upon the Deer, before he recover the Forrest, and the Deer drag the dogs into the Forrest, there the Purliu man may follow his dogs and take the Deer.

In some Letters Patents of the perambulations or pluralities of Forrests made by King E. 3. to any County where Lands are disafforested, which we have seen, there is reserved to the King 40 days for his wild beasts within the purliens to return again, and for his Rangers within that time to rechase them into the Forrest, which is taken to be a convenient time for that purpose. And albeit these purliens be absolutely disafforested, and have no liberty of Forrest there, yet for conveniency it hath been permitted that the Rangers of the Forrest should as often as the wild Beasts of the Forrest range into the purliu, with his hound rechase the same: and these Rangers have used to present unlawful hunting and Hunters of the Kings Deer within the purliu, as in the night, or at unseasonable Deer, or killing of the Kings Deer in purliens by no purliu men, but unlawful Hunters or the like: such as should not take advantage of their own wrong both to the King and the purliu men, and that they are known to be Deer belonging to the Kings Forrest, because there are no other within the purliu: wherein the best rule we can (for avoiding of tediousness) give the Reader, is to follow the judicial Records and Presidents of the Cires holden before grave and learned Justices in Cire, as those of Pickering, Lancaster, and the like, concerning presentment of matters done within the purliens of the Rangers, whereunto we do rather incline, when we consider the oath which the Rangers have anciently taken, and continually in these words. You shall truly execute the office of a Ranger in the purliu of P. upon the border of the Kings Forrest of P. You shall rechase with your Hound and drive the wild Beasts of the Forrest, as often as they shall range out of the same Forrest into the purliens; You shall truly present all unlawful hunting and Hunters of wild Beasts of Venery and Chase * as well within the purliens, as the Forrest, and those and all other offences you shall present at the Kings next Court of Attachments, or Swainmote which shall first happen: So help you God. And it is to be noted, that in such Forrests as have no purliens, there is no Ranger.

It was petitioned in Parliament, that no man be impeached for hunting within the purliu or without the bound of the Forrest, and that there be levied no assart rents.

The

Rot. Par. 51 E. 3. nu. 39.

22 E. 4. cap. 7.

43 E. 3. 8. the Earl of Arundels case.

38 E. 3. fo. 10. b. simile. 12 H. 8. fo. 10. a.

20 E. 3. Rot. Par. 1 pars pro deafforest. Foresta de Kemfarn.

Vide Rot. Par. 12 E. 3. nu. 26, 27. a complaint of the purliu men, and the Kings answer.

The oath of the Ranger.

* This proveth that the purliens are no part of the Forrest, but distinct things.

Rot. Par. 51 E. 3. nu. 39. 50 E. 3. nu. 80. 1 R. 2. nu. 60.

The Petition conſiſting on two parts. 1. Concerning hunting in the pur-
lien, or out of the bounds of the Forreſts, the ſecond concerning aſſart rents.

To the firſt, the King answereth, That the Charter of the Forreſt ſhall be kept,
which is a yielding to the Petition for that part, for by that Charter the bounds
of the Forreſts are eſtabliſhed, and no purliens excepted.

As to the ſecond, he answered, That the demand was unreaſonable.

The Commons made Petition that men might enjoy their purliens freely, ^{2 R. 2. nu. 43.}
and that perambulations might be made as was in the time of King H. 2.

Whereunto the King answered, The King thinketh the perambulations are
duly made, and who will, may complain, and ſhall be heard.

The Abbot of Whitby had a Forreſt called Whitby Forreſt (by the grant of In Itin. Pick.
H. 2. and King John with all Officers incident thereunto) adjoyning to the For- ^{8 E. 3. Rot. 42.}

reſt of the Earl of Lanc' called Pickering Forreſt, and the game of the Forreſt of
Pickering ranged into the Forreſt of Whitby, Idem Abbas habens exploratores
ſuos ſtatim ponere fecit retia, & alia ingenia ſua juxta Hakenefſe & alibi diſtan' a Fo-
reſta iſta per tractum unius arcus & aliquando plus, & poſtea cum canibus excitare
fecit ſeras, ita quod p' excitationem illam plures ſerarum illarum in redeundo & fu-
giendo verſus foreſtam de Pickering decidunt in retibus & ingeniis prædictis & ca-
piuntur, & annuatim capere facit in deſtructionem ſerarum foreſtæ prædictæ de
Pickering, ad damnum Domini, & nescitur quo Warranto; per quod præceptum fuit
Vicecomiti quod Venire faciat prædictum Abbatem. Whereupon the Abbot came
and pleaded his title to the Forreſt, ut ſupra. Et quod omnes Abbates loci prædicti
virtute Conceſſ', &c. prædictos cervos & cervas in locis prædictis ubi retia & ingenia
prædicta poſita fuerunt, & quæ fuerunt infra limites Foreſtæ ſuæ de Whitby, &
quoad quod idem habens exploratores ſuper ſeras Domini, &c. retia & ingenia
poni fecit prope Foreſtam de Pickering, &c. per quod in redeundo plures ſeræ cap-
tæ fuerunt, quod omnino eſt contra Aſſiſ. Foreſtæ, idem Abbas dicit, quod ad hoc re-
ſpondere non debet, &c. Et quia manifeſte liquet Curia, &c. quod ſeræ de Foreſta
ad Foreſtam aliter conferri non poſſunt, niſi iplius in cujus Foreſta inveniuntur, eo
quod ſigno aliquo non conſiſtunt ſignatæ nec diviſas aliquas cognoscunt. Ideo con-
ſideratum eſt, quod idem Abbas eat ſine die.

Nota, for Harts,
Hyndes.

By which Record and many others it doth appear, that when the Kings Came
of the Forreſt do range out of the Forreſt (and Furlieu, if any be) they belong
not to the King, but are at their natural liberty, & occupanti conceduntur.

The Kings Deer
are not branded
or ſigned with any
mark, that they
may be known
whoſe they are
out of the Forreſt.
7 H. 6. fol. 36.

And this is the reaſon that ſome have ſaid, that where the King was ſeiſed
of the Forreſt of M. in ſæ, and that a cuſtom was pleaded time out of mind, that
if any Beaſt of the Forreſt ſhould range into the free Chafe of the Abbot de Di-
en adjoyning to the ſaid Forreſt, that the Forreſters of the ſaid Forreſt, &c. might
enter into the ſaid Chafe, and with little dogs rechafe the Kings Beaſts of his
Forreſt into the Forreſt again, that this cuſtom is againſt Law, for that (be-
ſides the reaſon yielded in the Abbot of Whitbies caſe) immediatly when they
are out of the bounds of the Forreſt, the property is out of the King, for the be-
ing within the Forreſt maketh the property in that caſe. But the book of 7 H. 6.
is left at large whether the preſcription be good, or no, and yet aid was thereup-
on granted: and Dier 16 Eliz. 326, 327. agreeſt therewith. But in the Abbot
of Whitbies caſe there is no preſcription for the King, but againſt him.

Lib. 5. fol. 104. b.
Rolltons caſe.

It is to be obſerved, that by the Law of the Forreſt, when any claim is made
by any ancient Charter of any Franchiſe, Liberty, or Immunity, or diſcharge
within the Forreſt by ancient and obſcure terms and words, the entry is (for
example) Et quia non liquet Curia manifeſte cujuſmodi libertates prædict' vocabu-
lorum idem Prior habere intendit, dictum eſt Priori quod prædict' vocabula decla-
ret, &c. And after he that maketh the claim, declareth, that is, explaineth the
ſame, and pleadeth further, Quod ipſe & prædeceſſores ſui ſemper à confeſſione
Cartæ præd' ſine interruptione uſi ſunt & gaviſi ſunt libertatibus prædictis (ac-
cording to his declaration) & hoc paratus eſt verificare per miniſtros iſtius Foreſtæ, &c.
Ideo inquiratur rei veritas per eodem, &c. or the entry is after the declaration
made, Et quia videtur Juſticiariis quod expediens eſt & neceſſe, quod Curia cer-
tioretur

16 El. Dier 326,
327.

Wide Itin. Pick.
8 E. 3. The Prior
of Ellortons caſe.
Rot. 35. Et ibid.
the Prior of Mal-
tons caſe. Rot.

Regula.
Hil. 6 E. 3. Rot.
179. Coram Rege
diuturnitas & lon-
gava possessio vir-
tute generalium
verborum in anti-
quis Cartis suffici-
unt.

8 E. 3. Itin. Pick.
Lambstons case.
putura.
Geldum in Dome-
day saepe pro
Scot. Anglice.

23 H. 3. gard. 148.

* Carta de Fore-
sta cap. 14.

8 E. 3. Itin. Pick.
fol. 149.

F. N. B. 230.

tioretur super possessionem ipsius Prioris in hac parte, inquiratur inde veritas per ministros ejusdem Forestæ, aut thereupon the Foresters, Herberers, and Regarders are sworn, and so much as they find have been continually used, is allowed, and so much as hath not been used is disallowed; so as esse and continual possessions are the best Erpositors of ancient and obscure words.

For example: *¶ Quietum esse de misericordia Forestæ*, is to be quit of all americiaments in the which he in any forst might fall within the Forrest. And here misericordia is taken as well for a fine, as for an americiament.

¶ Quietum esse de Vasto, if he vnt wast in his woods within the Forrest he should not be americed, nor for any other wast.

¶ Quietum esse de rewardo, that is to be quit of americiament wheresoever in any Parish within the Forrest, if the usage has been accordingly.

¶ Quiet de omnibus geldis, i. quiet esse de omni putura Forestar, & de omni prestatione, ad collectionem garbartum, agnorum & lanæ ad opus forestar ejusdem forestæ.

¶ De Woodgeldis, i. quiet esse de omni collectione in foresta præd' ad opus quorumcumque ministrorum forest' præd' ratione boscorum.

¶ De Horngeldis, Quietum esse de omni collect' in foresta de bestis cornutis asses.

¶ De Fotegeldis, i. quiet esse de finibus & americiamentis pro canibus infra forestam in expeditatis, if the usage hath been accordingly, otherwise not: for ancient Charters by the Law of the Forrest must be adjudged according to the continued usage, and not ex vi termini.

¶ De Burefall i. ubi homines convenire tenentur, ibidem convenire ad stableciam faciend' circa feras, & ad easdem congregand', quietum esse de hoc servicio, quando Dominus chaceaverit.

¶ De Tristris, anciently written traistis, and is derived of traist, i. trust, and significeth, ubi alii homines manentes in eadem foresta tempore quo Dominus chaceaverit in eadem venire debent, & consisti sunt, Anglice are trusted, ad tenend' Leporarios certis locis assignatis pro feris ibidem expectand' & capiend', quietum esse de hoc servicio.

¶ De Fledwite, of fled, a Saxon word, a fugitive, one that fleeth, an outlaw, and wite a Saxon word also, a freedom.

¶ De Careyo, cum aliqua Carra, seu carecta cartata transeunt per forestam, & similiter * summagia seu Somagia equorum consuevit solvere secundum magis vel minus ministris ibidem pro chemino, ibidem habend'. Quietum esse de hujusmodi solutionibus. Summagium or Sommagium cometh of the French word sommier or summier, which significeth a Horse carrying any load. Chimagium, a Toll for way-faring men through a Forrest, derived from the French word Chemin for a way.

¶ De Scoto, seu Shoto, quando homines faciunt collectum inter se ad aliquod obtinendum seu evitandum. Quietum esse de tali collect'. *¶ De tallagio*, idem ut de Scoto.

¶ Extra regardum forestæ. If any man within a Forrest do hold his woods or lands by grant or prescription to be extra regardum forestæ, the woods or lands are deaforrested.

¶ Exilium, i. cum homines utlegantur in Itinere istius forestæ pro transgressionem Viridis seu Venationis.

¶ De escapio, secundum Assisam forestæ si averia alicujus in landis vetitis, vel tempore vetito in eadem inveniuntur, prima vice pro quolibet pede averiorum prædicti ipsi quorum fuerint americiantur ad unum denarium; & si secundo ibidem inveniuntur, similiter pro quolibet pede unum denarium & si tertio ibidem inveniuntur, averia illa remaneant Domino forisfacta, de quibus americiamentis & forisfacturis per hujusmodi vocabulum, de escapio, extitar quieti.

¶ De Pannagio, that is, to be quit to pay any thing for pannage.

¶ Assertum, Assert, is so called of the effect (as some hold) and is derived (say they) of ad and sero, assero, because of wood grounds, marshes or wast grounds they

they are converted to be sown with Corn, and therefore in the Register, and F. N. B. it is written assartare, with an E, and so it is in Carta de Foresta c. 4. Bracton hereof saith, Illud quod fuit aliquando boscus, & locus vastæ solitudinis & communia & jam inde efficitur assartum, vel redactum est in culturam. And here with agreeth Fleta, Illud olim fuit foresta & boscus, &c. & jam efficitur assartum, & redactum est in culturam, & idem dici poterit de mariscis & aliis vastitatibus in culturam redactis.

Others fetch it otherwise, but we hold, that it is derived of the French word essarter, to grub up, or clear a ground of wood, &c. and this appeareth by Domestday. Herefordsh. Merchelay in eodem manerio sunt 58 acra terræ provect' de sylva, written over the same essars, de essart sylvæ exeunt 17 s. & 4 d. E being turned into A.

Radulphus Episcopus Karleol petit versus Priorem Ecclesiæ Karleol decimas duarum placearum terræ de nova assartarum in Foresta de Inglewood, quarum una vocat' Lynthwait & alia Kyrthewayte, quæ sunt infra limites parochiæ suæ de Aspaterick. Et super hoc similiter venit Mr. H. de Burton persona Ecclesiæ de Thorisby, & easdem decimas clamat ut pertinen' ad Ecclesiam suam. Et Prior venit & dicit quod Henr. Rex vetus concessit dicto Deo & Ecclesiæ suæ beatæ Mariæ Kirleol' omnes decimas de omnibus terris quas in culturam redigerent infra Forestam, & inde eos seof favit per quoddam Corn eburneum quod dedit Ecclesiæ suæ præd', &c. Et Willielmus Inge qui sequitur pro Rege dicit quod decima præd' pertinet ad Regem & non ad alium, quia sunt infra bundas Forestæ de Inglewood. Et quod Rex in Foresta sua præd' potest villas edificare, Ecclesias construere, terras assartare, & Ecclesias illas cum decimis terrarum illarum pro voluntate sua cuicumque voluerit conferre, &c. Et quia Dominus Rex super præmiss' vult certiorari, ut unicuique tribuatur quod suum est, assignetur, &c. & certificent Regem ad proximi' Parliamentum, &c.

¶ a Purpresture. For this and the derivation, see in the Second part of the Institutes, Statutum de Bigamis c. 4. and the exposition upon the same, and Carta de Foresta cap. 4.

¶ b Coopertura is a Thicket or Cobert of wood.

¶ c Maeremium is derived of the old Norman word Marisme for Timber.

¶ d Scotales, Scotallæ, derived of two English words Scot and Ale, as much to say as a tribute or contribution of drinking for the ministers of the Forrest when they came to the house of any, whereunto others are contributory within the perambulation of the Forrest, which then was called e putura, a drinking. And after they claimed the same for all victuals for themselves, their Servants, Horses, and Dogs, which was called putura; and this doth notably appear by a Record in 5 E. 3. in these words.

¶ f Putura in Chacea de Bowland, i. consuetudo clamata per Forestarios, & aliquando per balivos hundredorum, recipere victualia, tam pro seipsis, hominibus, equis & canibus de tenentibus & inhabitantibus infra perambulationem Forestæ seu hundredi quando eo pervenerint, nihil inde solvend'. Where the Statute of Carta de Foresta speaketh. Nullus Forestarius seu balivus de cætero faciat Scotallas, &c. g By the Statute of 25 E. 3. it is enacted, that no Forrester or Keeper of Forrest or Chase, nor any other Minister shall make or gather sustenance, nor other gathering of Victuals, nor other thing by colour of their office against any mans will within their Bailiwick or without, but that which is due of old right, that is, those fees, which time out of mind they ought to have within that Forrest, and as shall appear to be due by the oath of 12 Regarders.

de putura. g 25 E. 3. cap. 7. stat. Cap. Itineris fillenale, of the Saxon word fillen, or fullen, and ale, i. an Ale feast, whereat they were filled with Ale. Bracton l. 3. f. 117. in reciting of Capitula Iteneris, calleth it Filckale, i. Fildale, an extortion colore compotationis. Vide Fleta lib. 1. cap. 20. Carta de Foresta cap. 7.

Regist. 157. Fleta l. 2. c. 35. F.N.B. 226. f. Cart. de Forest. cap. 4. Bract. l. 4. f. 226. Fleta l. 4. cap. 22. Lib. 2. cap. 25. Vide Lucubr. Oekam 20. b. Rot. Pat. 51 E. 3. nu. 39.

Rot. Plac. Parl. de An. 18 E. 1. Rot. 8. Inter Episcopum Karleol' & Priorem ejusdem de decimis assartorum.

a Glanv. l. 9. c. 11. 12. Fleta l. 2. c. 35. 18 E. 2. de visu Franc. pleg. Dier 7 El. 240. b Cart. de Forest. cap. 12. c 8 E. Itin. Pick. fol. 17. d Cart. de Forest. c. 7. Fleta l. 2. c. 35. Cap. Itin. W. 1. c. 4. Pastur. pauperum. e Putura. Vid. 45 E. 3. 15. & F.N.B. 209. b. De putura pauperum, a drinking or sustenance for the poor. 12 H. 4. 24 Hil. 5 E. 3. Coram Rege Rot. 30 Eborum. 8 E. 3. Itin. Pick. fol. 150. b. Putura. f 8 E. 3. Itin. Pick. Prior de Ellortons case. Quitt' de geldis is to be quit to

8 E. 3. Trin. Pick.
Sir John de Mel-
fay's case.

¶ Chablicia, or Cablicia, *hrowse wood*, derived of the French word Chablis, as boys Chablis, either rent down from træs by the wind, or branches of træs cut for the hrowse of Deer.

¶ Parkebote, to be quit of enclosing of a Park or any part thereof, derived of two English words, Parke, and bote.

Fleta li. c. 47.

¶ Brighote, or Bruckbote, to be quit of making of bridges.

¶ Pannagium, or panagium, is derived from the French word panage, i. pastura pecorum in nemoribus de glandibus & aliis fructibus arborum.

Trin. 2 E. 3. Co-
ram Rege Rot. 12.

¶ Expaltare canes, i. expeditare canes. Expeditatio is derived of ex & pede, because the Dog is lamed in the foot, inexpeditatus is unlamed.

Carta de Foresta
cap. 6.

Canis in this Act is taken for Mastivus by these words, talis expeditatio fact' p Assisam communiter usitatam, which hath reference to the Assise of the Forrest, tempore H. 2. Art. 6. which speaketh only de expeditatione Mastivorum, & Assis. & Consuetud' Forestæ, 6 E. 1. c. 9. speaketh only de Mastivo.

¶ Ortelles, this word is taken from the French word Orteilles, in English, Claws.

Carta de foresta,
ubi supra.

¶ Pellota, of the French word Pelote, and they from Pila: In this Act it is taken for the ball of the foot, sine pelota, without the ball of the foot. And therefore by the express words of this Act the ball of the foot of the Mastiff is not to be cut off, but the three claws of the forefoot to the skin. This extendeth only to Mastiffs, and to no other Dogs, for Ubi non est lex, ibi non est transgressio; and necessary it is, that such as dwell in Forrests where there are covertts, that they should keep other Dogs unexpeditated, and the Mastiff expeditated for the defence of their house, or for giving of warning of Thieves and Robbers, &c. Molossus (the old British word) is a Pale-thief, because he doth mase or amase a Thief, &c.

M. S. Priorat. Co-
vent' fo. 14. b.

¶ Managium & mesuagium, is commonly in ancient Records taken for mesuagium.

The words of this Act are De expeditatione Canum existentium in foresta, and therefore in purties or places deafforrested, a man may keep a Mastiff without being expeditated. And that I may say it once for all, my intention is chiefly to explain the obscure words of this Statute of Carta de Foresta, and other Acts, and leave the Reader to the text it self being plain: for, Satiis est petere fontes, quam sectari rivulos.

13 R. 2. c. 13. 15 H.
7. c. 11. 1 Jac. c. 27
3 Jac. c. 13. Assise
Forest'.

Who may keep Greyhounds or other Dogs to hunt, or Ingens, &c. either in a Forrest, or out of the Forrest, appeareth by divers Statutes.

But if Greyhounds be found running ad nocumentum, the Forrester ought to retain them, and present them in the presence of the Werderers, and send them to the King, or to the Chief Justice of the Forrest.

We find not that any Chapter or Article of Carta de Foresta, doth extend to Chases or Parks, but only the 11 Chapter. Quicunque Archiepiscopus, Episcopus, Comes vel Baro ad mandatum nostrum transierit per forestam nostram, &c. which Chapter doth not only extend to the Forrests of the King, but to his Chases and Parks also, for so was the Law before the making of this Act which is but in affirmance of the Common Law of the Forrest before this Act.

1. In respect of the persons, for every Lord of Parliament, be he Spiritual or Temporal, had this priviledge besides those that be named in this Chapter, as such Abbots and Priors, as were Lords of Parliament, and so of Dukes, Marqueses, and Viscounts, which were erected and created, afterwards being Lords of Parliament have the same priviledge also.

8 E. 3. Trin. Pick. f.
134 A Forrester or
any other Officer
of the Forrest can-
not give a Noble-
man a course in
the Forrest but it
is presentable.

2. By reason of the kind of commandment ad mandatum nostrum, saith the Statute, which words have reference to the Writ of Parliament directed to every Lord of Parliament. Ideo vobis mandamus, &c. and is a legal commandment by Writ directed severally to each and every Lord of Parliament to appear at the Kings Court of Parliament, &c. to treat de arduis & urgentibus negotiis Regni, statum & defensionem Regni & Ecclesiæ Anglicanæ concernentibus, and to recreate themselves veniendo, and after redeundo, they may passing by any of the Kings

Things Forrests, Chafes, or Parks, hunt and kill one or two of the Kings Deer. The Lords of Parliament may do it at other times ex gratia, but by Law cundo & redeundo, to and from the Parliament.

3. Here is implied that the Lord of Parliament may in the absence of the Forrester or Keeper after the blowing of the horn, kill one or two of the Kings Deer, propriis suis canibus aut arcu suo proprio.

4. Here is a secret conclusion of Law, that albeit spiritual persons are prohibited by the Canon Law to hunt, yet by the Common Law of the Land they may for their recreation, to make them fitter for the performance of their duty and office, use the recreation of hunting, as here it directly appeareth: And in *Affisa Forestæ* 6 E. 1. it appeareth that the Abbot of Peterborow had a right of hunting in the Forrest of Rockingham. And this appeareth in other Statutes, viz. 13 R. 2. 19 H. 7. 1 Jac. And at this day, and time out of mind, the King hath had after the decease of every Archbishop and Bishop (inter alia) *Mutam suam canum*, &c. his Kennel of Hounds, or a composition for the same, which and other things are in the Exchequer called *multa*.

5. The last conclusion is, that all Canons against the Laws or Customs of the Realm, are void and of none effect.

Linwood de Venatore Clerico, &c.
Cart. de Foresta
cap. 11.
Affisa forestæ,
6 E. 1.
13 R. 2. cap. 13.
19 H. 7. cap. 11.
1 Jac. ca. 27.
Muta canum is derived from the French word *muté de chiens*.
See 25 H. 8. cap. 19. &c.

Of the drifts of the Forrests, *Agitatio Animalium in Foresta*.

The drifts of the Forrests are said to be when all the Cattle as well of Commoners as of Strangers are driven by the Officers of the Forrest to some certain Pound or place inclosed, and the end hereof is threefold, viz. First, to see whether those that ought to common do common with such kind of Cattle as by prescription or grant they ought. Secondly, if they common with such Cattle as they ought, whether they do surcharge or no. Thirdly, if the Cattle of any Stranger be there which ought not to common at all.

By the Statute of 32 H. 8. it is enacted, That all Forrests, Chafes, Commons, Moors, Heaths, and waste grounds within the Realm of England and Wales, and the Marches of the same, and every of them shall be driven at the Feast of St. Michael the Archangel next coming or within 15 days then next after, and so yearly to be driven by the Lords, owners, and possessors of the said Forrests or Chafes, or by the Officers of the same, and by the Constables, Headboroughs, Bailiffs, Burholders, and Tithingmen, within whose offices, precincts, and limits the Commons, Moors, Marishes, Heaths, and waste grounds being out of the Forrests and Chafes be or lie upon pain of xl s. to be forfeited to our said Sovereign Lord the King by every of the said Officers, Bailiffs, Constables, Headboroughs, Burholders and Tithingmen; as often, and at every time as the said drift shall be omitted, or left undone, or not effectually done within 15 days after the said Feast of St. Michael the Archangel, as is aforesaid. And it shall be also lawful to the Lords, owners and possessioners of the said Forrests and Chafes by their Officers of the same, and by the Constables, Bailiffs, Headboroughs, Burholders and Tithingmen and every of them within the limits of their offices to make like drift of the said Forrests, Chafes, Commons, Moors, Marishes, Heaths, and waste grounds at any other season and time of the year whensoever, and as often as they shall think meet and convenient.

Out of this Act of Parliament, as to the drift of the Forrest or Chase, these 3 conclusions are to be observed. 1. By what persons this drift is to be made, and therein if the Forrest be in the Kings hands it must be made by all the Kings

§ 1

Officers

Officers of attendance in the Forrest, and by four men and the Reeve of every Town within the Forrest, who to that purpose are included under the name of Officers. And if they be in a subjects hands, then either by the owners or possessors of the said Forrests or Chases, or by such Officers as is before said. 2. At what certain time such dist in Forrests or Chases is to be made? It appeareth by this Act that it ought to be effectually done yearly within 15 days after the Feast of St. Michael the Archangel. 3. The said dist may be made at other season or time of the year whensoever, and as often as they shall think meet and convenient. 4. That stoned Horses under 15 handfuls high are prohibited to Common in any Forrest. See the Statute. 5. For Commons, &c. out of any Forrest or Chase. In these words are included Purlicus and other grounds wherein men have Common, and these are to be driven by the owners and possessioners of the same, and by the Constables, Headboroughs, Bailiffs, Tithingmen, and Tithingmen, within whole offices, precincts, and limits the said Commons, &c. being out of any Forrest or Chase, do lie at such times as are aforesaid.

Ayerles of Hawks;
8 E. 3. Itin. Pick.
Sir John de Mel-
faes case.

29 H. 8. tit. Offi-
cers, Br. 47.

The Statute speaketh De Aeris Accipitrum, Espervorum, Falconum, Aquilorum, & Hieronum, which is but in affirmance of the Common Law, for it extendeth to Ayerles of other Hawks then be specially named, as to Ayerles Merleonorum in boscis suis de Levesham.

A forrester by Patent for his life is made Justice in Cire of the same forrest hac vice, the Forrester'ship is become void, for these offices be incompatible, because the Forrester is under the correction of the Justice in Cire, and he cannot judge himself: the same Law is of a Warden of a Forrest and of a Justice in Cire of the same Forrest: Though the offices of the Steward and Justice of the Forrest be both judicial, yet whether he be Steward of the Swanimote, or of the Cire, he is under the correction of the Justice in Cire, and therefore incompatible.

We have ben requested to set down what persons and what Officers either that then were, or which have ben since the last Cire, and how many sorts of Officers, and what number do belong to a Forrest, which we cannot better resolve and satisfie, then by the Records of the Cires of Forrests, and specially by the Writ of Summons of those Cires, which we have thought good to set down verbatim, not only for answer to the said questions, but for divers other observations, as we find it in the said Cire of Pickering with the exact and particular return of the same.

Vic' Eborum.

The persons that
ought to appear
before the Justices
in Cire of the For-
rest, &c.

Foresta Hen.
Com. Lanc'.

* Under these
words are inclu-
ded the Constable
of the Castle, the
Warden, the Ran-
ger, the Agisters,
the Steward, the
Bow-bearer.

* Four great learn-
ed men Justices in
Cire of the Forrest.

* See Cart. de
Forest. cap. 2.

Forestar' Viridar'.

Edwardus dei gratia Rex Anglie, dominus Hibernie, & dux Aquitania
Vic' Eborum salutem. Summon' per bonos summonitores Archiepiscopos, E-
piscopos, Abbates, Priores, Comites, Barones, Milites, & omnes liber' tenentes,
qui terras seu tenementa habent infra metas Foresta dilecti consanguinei &
fidelis nostri Henrici Com. Lanc. de Pick. in Com. predict. & de qualibet
Vil. ejusdem Com. infra metas ejusdem Forest. existen. quatuor homines &
Prepositum & Forestar' Villarum, & * omnes alios, qui coram Justiciar. ad
placita Foresta venire solent & debent, quod sint apud Pickering die Luna
prox. post Fest. S. Michaelis prox. futur. coram dilectis & fidelibus nostris
Ricardo de Willoughby, Jo. de Shardelowe, Roberto de Hungerford, &
Johanne de Hambury, tribus vel duobus eorum quos ad requisitionem dicti
consanguinei nostri constituimus Justic' ad itinerandum hac vice ad Placita
Foresta ipsius Comitis in Com. predict. a tempore quo Edmundus nuper
Com. Lanc. pater pred. Henrici, cujus heres ipse est, Placita Foresta in ea-
dem Foresta virtute * concessionis sibi per dominum E. nuper regem Anglie
Avum nostrum inde fact. ultimum tenuit, auditur & factur' preceptum no-
strum de hiis que ad placita pred. pertin'. Fac. etiam venire coram Justic'
predictis omnes Forestar', Viridiar', & omnes illos qui fuer' Forestar' &
Viridar' Foresti predicti in Com' predicti post ultima placita predicti cum
omni-

omnibus attachiament' suis tam de Viridi quam Venatione quæ post ult. Placita Forestæ sunt emersa & nondum terminat' (viz.) tam de illis Attachiamentis quæ manent infra metas Forestæ, quam de illis quæ manent extra Forest': Fac etiam venire coram eisdem Justiciariis tribus vel duobus eorum regardatores ipsius Comit' in balliva tua, Ita quod habeant ibi omnia Regarda sua sigillis suis signat' & omnes Agistatores præfat' Com. in eadem balliva sua cum omnibus Attachiament'. Et habeas ibi Sum' & hoc Breve. T. me ipso apud Westm. 17 die Augusti, Anno regni nostri 8.

To what end the Officers are summoned.

Regardatores.

Ad quod breve Petrus de Saltmersh Vic. Eborum retornavit quod fecit plenum retornum istius brevis Hugoni de Nevill ballivo libertatis H. Comit' Lanc. Honor. de Pickering, cui executio istius brevis restat faciend'; qui sibi respond. quod summon. fecit Archiepiscopos, Episcopos, Abbates, Priores, Comites, Barones, Milites, & omnes libere tenen. qui terras & tenementa habent infra met. Forest', & de qualibet Vill. ejusdem Com. infra metas ejusdem Forest. existen. quatuor homines & Preposit. & Forestar. Villar', & omnes alios qui coram Justiciar' ad placita venire solent & debent, quod sint apud Pickering ad diem in Brevi prædict. content. coram præfat. Justiciar' tribus vel duobus eorum, auditur. & factur. præcept. domini Regis de hiis quæ ad prædict' placita pertinent, Et quod venire fecit Forestar', Viridar', & omnes illos qui fuer' Forestar', & Viridar' Forest. præd. in balliva sua post ult. placita præd. cum omnibus Attachiamentis præd. tam de Viridi quam de Venatione quæ post ult. placita Forestæ sunt emersa & nondum terminat. Et etiam quod venire fac' coram eisdem Justic' tribus vel duobus eorum Regardatores ipsius Comit' in balliva sua, ita quod haberent ibi omnia Regarda sua sigillis suis signat' & omnes Agistatores præfat. Comit' in eadem balliva sua cum omnibus agistamentis prout patet in retorn. schedula suo prædicto attachiata.

Nota, the punctual and direct answer to all the points of the Writ.

Willielmus de Percehay Miles.

Forestar' de feodo in le Westward
istius forestæ de Pickering, viz.

* Petronilla de Kynthorpe, & po. lo. suo
Edmundum de Hastings ad omnia faciend' quæ Forestar' incumbunt durante Itinere, & fecit sacramentum.

Forestar' Custod. Forestæ in le
Eastward, viz.

Rogerus de Leicester.
Hugo de Teland.
Willielmus le Parker.

* Viridar' Forestæ de
Pickering, viz.

Robertus Thurnese.
Rogerus Browne.
Robertus Playce.
Jo. de Kilwardbye.

Regardatores
Forestæ de
Pickering.

Willielmus de Everly.
Rogerus de Lone.
Johannes Boye.
Johannes filius Alani.
Galfridus de Kynthorpe.
Thomas Thurnese.
Hugo de Nevill.

Rogerus de Alveston.
Johannes filius Galfridi.
Rogerus de Stapleton.
Rogerus Strutcocke.
Radulphus de Colloughton.
Johannes de la Chemnie.

Regardator' 13.
By the Statute de Carta de Foresta cap. 7. there are to be 12 at the least, and, as here it appeareth, there may be more.

Agistatores 4. { Agistatores in le Westward istius Forestæ { Johannes Dringe.
Ricardus Russell.
Agistatores in le Eastward istius Forestæ { Willielmus de Roston.
Willielmus Russell.

Nomina Forest' &
Viridar' qui fue-
runt.

Nomina Forestar' nunc istius Forestæ, & eorum qui fuerunt Forestar'
istius Forestæ, & eorum qui fuerunt Viridar' istius Forestæ.

Alanus de Newton { Capital. Forestar. Willielmi de Percchay unius
Johannes de Wardesden. { Forestar. de Feodo Forestæ de Pick. in le
Westward ibidem.

Henry de Ripley { Capital. Forestar. Petronille de Kintthorp alterius Fo-
Thomas de Dalby. { restar. de feodo Forestæ de Pickering.

David de Newton { Capit. Forestar. Hugon. de Teland For. Custodis Fo-
Thomas de Rippley { restæ in le Eastward.

Nomina Subforestariorum Forestæ prædict'

Subforestarii 8. { Johannes de Harley. Johannes Munmewe. Forestar. Radulphi
Ricardus de Aleintostes. Johannes Scot. de Hastings Cu-
Willielmus Gower. Willielmus Courtman. stod. Forestæ præ-
Ricardus de Helmesly. dict. nunc. {

Nomina subforestar. qui fuer. in Foresta ista post ultimum Iter, &c.

Galfridus de Hawly. Johannes Rounceby. Adamus fil. Willielmi.
Robertus de Wigan. Rogerus fil. Nich. Johannes de Nevil.
Petrus Lilly. Alanus fil. Radj. Thomas de Newton.

Viridar'.

Bernardus de Bergh, qui obiit, fuit Viridar' in Foresta ista, & Alexander
de Bergh filius ejus & heres venit & reddidit rotulos suos tam de viridi
quam de venatione tangen' Forestam istam de tempore prædicto.

The Law of the Forrest is, that if a Werderoz dye, his heir is to bring in
the Rolls of his Ancestors time, which if he do, then the Entry is ut supra.

Adam de Brui qui obiit fuit Viridar' in Foresta prædict' & nullus est
qui venit ad Rotul. reddend', Ideo Vic. seisi' fac. omnia terras & tene-
menta quæ fuer. præd. Ade quousque, &c. Postea venit Willielmus B. filius
ejus & heres, & fecit finem pro Rotulis prædictis, & admittitur per 40 s.
prout patet in Rotul. de extractis.

If the Werderoz alien his Lands or die seised, and no man bringeth in the
Rolls, then shall the Land by the Law of the Forrest be seised by the Sheriff,
which the Werderoz had, until the Rolls be brought in, and if the Rolls be lost,
then till he make his fine and have his Ouster le main, and the Entry is, as is
next above.

Ricardus de Shelton, qui obiit, fuit Constabular' castr' præd. & custos istius
Forest', & nullus est qui venit ad rotul' & munimenta ist. Forest. tangen.
reddend', Ideo veniant ejus terr' & tenementa tenentes ad respondend', &c.

If the Warden of the Forrest dye, and his heir, or Tertenant bring not in the Rolls, &c. his heir or Tertenant shall answer for the same.

And here it is to be obserbed, that where the Forrest of Pickering was appendant or belonging to the Castle of Pickering, that he that is the Constable of the Castle is ever by the Law of the Forrest Chief Warden of that Forrest. And so it is of the Forrest of Windsor belonging to Windsor Castle, of the Forrest of Rockingham belonging to the Castle of Rockingham, and all other Forrests belonging to Castles. And accordingly here you may observe, that the office of Constableness and Wardenship are in this Record conjoynd one with the other.

Philippus de Monte Gomeri qui sequitur pro Domino Rege, petit vers. Radulphum Quintyn Ballivum custodie liberae Haye Regis de Alrewas qua pertinet ad Serjantiam Regis Seneschall' Forestae Regis de Canoco, & qua ab eadem Serjantia alienata est sine assensu predecessorum Regis Regum Angliae. Et Radulphus venit, & per licentiam reddit Domino Regi inde seisinam suam, &c. Trin. 14 E. 1. in banco Rot. 7. Staff.

The duty of a Woodward doth appear by his name, and by his oath. Nomina Custos forestarum sunt notae rerum.

Hil. 13 E. 3. it is thus resolved: Quilibet Woodwardus secundum Assisam Forestae debet portare hatchettum, & non arcum & sagittas pro sinistra suspitione venationis deponend' ad praesentand' tam de viridi quam de venatione. Et videtur Justic' hic & Concilio Regis quod * Capreoli Anglice Roes, sunt bestiae de Warrenna & non de Foresta, eo quod fugant alias feras.

A Bedellus is an Officer of the Forrest, that doth warn all the Courts of the Forrest, and doth execute the Process of the Forrest, and make all Proclamations as well within the Courts, as without; and is derived of the Saxon word Byder, to call or warn, or of the French word in Normandy Bedeau, a Bailiff or Apparitor.

A Master of the Game of the Forrest.

A Mensis vetitus, fence month, or defence month, so called, because it is the fawning month, when the Does have Fawns, for the preservation whereof they ought to be fenced, and defended from hurt and disquiet. It containeth a month containing 31 days, and beginneth in the 15 day before Midsummer (that is, the Nativity of St. John Baptist) in the beginning of which a Swanimote is to be holden, and endeth 15 days after. See the Statute of Carta de Foresta, c. 8. whereby it is enacted, quod tertium Swanimotum teneatur in initio 15 dierum ante festum Sancti Johannis Baptistae, quando Agitatores nostri conveniunt pro * faonatione seu feonatione bestiarum nostrarum.

This word faonatio or feonatio, is derived of the French word faonier, that is, to fawn, or for Does to bring forth, &c.

a See Rot. Parl. 18 E. 1. fol. 3. nu. 37. the punishment of a Forrester for doing trespass in the Forrest.

b If the King or other Lord doth pardon a trespass in a Forrest, and the offender at a Justice seat by his learned Council plead the same; in the proceeding thereupon we do observe two things. First, That by the Law of the Forrest, before any allowance thereof, the Justices charge the Ministers of the Forrest to enquire whether the delinquent hath done any trespass in the Wert or Menson after the Date of the pardon. Secondly, When the pardon is allowed, then the entry is, Quod invenit manucaptos quod amodo non forisfac', i. non delinqueret aut peccaret. c But if an offender be convicted for trespass in the Forrest in hunting, &c. and adjudged to be fined or imprisoned, which fine, though it be paid, yet shall he find sureties for his good abearing, &c. in these words: d Quod amodo se bene geret, & in Foresta praedicta non forisfac'. i. non delinqueret seu peccaret. Unde forisfactura pro delicto.

e By the absence or non venue of the Justices in Cir at the day of the adjournment, the Justice seat is discontinued, and how and by what means it may be recontis

Hil. 13 E. 3. Coram Rege Rot. 102. Eborum. 8 E. 3. Itin. Pick. acc. * Roe-bucks, Capreoli.

16 E. 3. fol. 1. a. Cart. de Foresta. cap. 8.

* The printed book is venation, which ought to be amended, and made faonation or feonation, which signifieth the fawning.

a Rot. Parl. 18 E. 1. fo. 3. nu. 37.

b 8 E. 3. Itin. Pick. Sir Ralph Hastings case.

* This is the word of Carta de Foresta cap. 10.

c Ibidem Rob. Saltmerthes case.

d Carta de Foresta cap. 10.

e 8 E. 3. Itin. Pick. of William de Persay, and William de Kythorp fo. 165.

7 R. 2. cap. 3.

recontinued and resummoned, it appeareth in 8 E. 3. Itinere Pickering.

No Jury shall be compelled by any Officer of the Forrest or any other person whatsoever, to give their verdict in any other place, then where their charge is given, against their good will, nor by malice, menace, or other duress shall be constrained to give their verdict of a trespass in the Forrest, otherwise then their conscience will clearly inform them. This Law extendeth to Forrests only.

Albeit there be some beasts that be no beasts of Forrest, as the Duck, &c. and some Beasts and Fowls that be no Beasts and Fowls of Warren, yet if any man hunt or hawke at them within the Forrest, it is against the Assise of the Forrest, and punishable by the Laws of the Forrest, for all manner of hunting or hawking there without warrant is unlawful, because it disquieteth the beasts of the Forrest.

Carta Regis H. 1. civibus London'.

* Nota, the Citizens of London had this privilege before this Charter.

42 E. 3. 2. a. in Tran's.

We read that King H. 1. by his Charter granted, Quod Cives Londonie habeant fugationes suas ad fugandum sicut melius, & plenius habuerunt * antecessores eorum, scilicet Silre, & Middlesex & Suer.

The King being seised of a Forrest, did grant the Forrest to another in fee, the grantee shall have no Forrest, because he hath no power to make Justices and Officers of Forrest to hold Courts, &c. but yet though it cannot take effect ex vi termini, as a Forrest, yet together with the Game the same shall pass as a free Chase for the Savages and Conies; for as hath been said, every Forrest is a free Chase, & quiddam amplius.

Regist. 8. b.

Chaceæ est ad communem legem, and is not to be guided by the Forrest Laws, and so are Parks.

See the first part of the Institutes, Sect. 1. verb. Tres ou ten'ts.

But if the King doth grant a Forrest to a Subject, and granteth further that upon request made in the Chancery, he and his heirs shall have Justices of the Forrest, then the Subject hath a Forrest in Law, as the Duke of Lancaster had the Forrests of Pickering and Lancaster, and the Abbot of Whitby had the Forrest of Whitby in the County of York, which being not understood, hath been the cause that Readers and others have erred. Vide 12 H. 7. Kelw. 13. & 14. & c. 4 E. 3. 55. Malins case. 2 H. 6. 15. Forest de Exmore. 27 H. 8. c. 7. 1 E. 3. c. 2. 22 E. 4. cap. 7. 32 H. 8. c. 13.

Mich. 18 E. 1. in Banco Rot. 15. Eborum.

Ricardus de Cornubia & 9 alii attach. fuerunt ad respondend' Johanni de Sallaye quare ipsum ceperunt, & in prisona detinuerunt per decem septimanas apud Castrum de Knaresburgh, &c. Ricard' & alii dicunt quod Castrum & Honor de Knaresburgh, cum Foresta de Bestaine fuit aliquando in feifina Dom' H. Regis, patris Domini Regis nunc, & eo tempore fuit talis consuetudo in Foresta predicta, quod si quis indictatus fuerit per Forestarios coram Seneschallo ejusdem Honoris de transgressione de venatione facta in eadem Foresta, idem Seneschallus tales transgressores ubicunq; fuerint inventi infra eandem libertatem predicti Honoris, licite potest arrestare & imprisonare, & eos in prisona detinere quousq; satisfecerint de transgressione, &c. Qui Rex Hen. dedit predict' Honorem cum Foresta, &c. Ric' fratri suo Com' Cornub' patri Edmundi Com' Cornub' qui toto tempore suo usus est tali libertate arrestandi, &c. Johannes e contra dicit, nullam talem fuisse consuetudinem arrestandi malefactores, nisi quando capti fuerunt cum manuopere, & hoc ab antiquiore tempore quia idem Comes non habet ibidem Forestam, sed Chaceam tantum. Et quod tempore Will. de Stotewill Dom' dictæ Chaceæ qui dedit Regi J. dictam Chaceam, & tempore dicti Regis J. & tempore Regis H. patris, cum dicta Chacea fuit in manu sua, nunquam arrestaverunt aliquos de transgressione in Chacea illa, nisi illos qui capti fuerunt cum manuopere, & hoc offert verificare per patriam, &c. Ricardus dicit quod non possunt predictam verificationem sine predicto Com' verificare. Ideo præc' est vic' quod sum' predict' Com', &c. Consimile placitum & consimilis responsio in eodem Rotulo. Item al' in Rot' 163.

By the grant of a Forrest a Chase passeth.

Nota, capri cum manuopere.

King

King R.2. granted to Thomas Duke of Gloucester in special tail, the Castle of S. Brionel, and the Forrest of Dean, (whereby nothing passed as hath been said, but a Franck Chase) now by authority of Parliament it is enacted, that the said Duke should hold the said Forrest as a Forrest, and to constitute such Justices and Officers, &c. as belong to a Forrest. Rot. Parl. 14 R.2. nu.13.

But what was the title of the Courts of Cir of Forrest in the hands of Subjects? We answer, taking one example of the Forrest of Pickering in the hands of Henry Earl of Lancaster; Placita Forestæ Henrici Comitis Lanc' de Pickering tenent apud Pickering coram Ricardo de Willowby, Jo. de Shardelowe, Roberto de Hungerford, & Johanne de Hanbury, Justiciariis ad itinerand' hac vice, ad placita Forestæ prædictæ in Corn Eborum assignat die Lunæ prox' post festum Sancti Michaelis, Anno regni Regis E.3. post Conquestum 8.

If any felony be committed within the Forrest, it shall be inquired of before the Judges of the Common Law, and doth not belong to the consulance of the Chief Justice of the Forrest. 12 E. 3. coron. 119 Felonia.

Mich. 9 E.1. coram Rege Rot. 6. Huntingdon. Transgressio in foresta Regis pro Venatione Regis non est hic terminanda. Transgressio.

Nota, Before Scroope and other Justices in Cir, according to the course of the Common Law, a man claimed to be quit of pawnage in the Kings Forrest, and also he claimed in the same Forrest pawnage of his tenant pur agistes; and for that this belonged to the Justices of the Forrest, they would not meddle with it. And the reason of that is, the words of the Statute of Carta de Foresta, c.16. Præsententur capitalibus Justiciariis nostris de Foresta, cum in partes illas venerint, & coram eis terminentur. So as the termination and ending thereof belongeth to the Chief Justices of the Forrest, by the express words of the Statute. And where the Statute saith, Coram capitalibus Justiciariis nostris, &c. It is to be known, that there is but one Chief Justice of the Forrests on this side Trent, and he is named Justiciarius itinerans forestarum, &c. citra Trentam. And there is another Capitalis Justiciarius, and he is Justiciarius Itinerans omnium forestarum, &c. ultra Trentam; who commonly is a man of greater dignity then knowledge in the Laws of the Forrest. And therefore when Justice seats are to be holden, there be associated to him such as the King shall appoint, who together with him shall determine omnia placita, &c. forestæ, with a Patent of Si non omnes, and a Writ De admittendo, &c. And the Chief Justice of the Forrest, and these associates, are Capitaless Justiciarii forestæ, and named Capitaless in respect of the Wardens and others, that to some purposes (as hath been said) have inferior judicial places.

V. Cartam de Foresta cap. 16.
Temps E.3.
Kelw. 150. b.
V. 21 H. 7. 22. & 30

For these associations and other Writs see a notable president 8 E. 3. Itin. Pick. in the case of William of Perlay, &c. fol. 163.

And seeing, as it hath before appeared, the Forrest Laws differ in many cases from the common Laws of England, it is good reason they should be determined before men learned in the Laws of the Forrest, as in other cases. As if a trespass be done either in Wert or Wenison in any Forrest in the hands of a Subject, in the life of the ancestor, Lord of the Forrest, it shall be punished in the life of the heir. But so it is not in the Chases or Parks of a Subject, for by the Common Law Actio personalis moritur cum persona.

If a man committed a trespass in a Forrest, and dye, by the Forrest Law the trespass is unpunishable, agreeable to the rule of the Common Law.

But by the Statute of 19 H. 7. he that shall stalk with any hush or beast in any Park, Chase, or Forrest, without license, &c. shall forfeit for every time he so stalketh x l. to any person that will sue for the same by action of debt, wherein no wager of Law, protection, or essoin shall be allowed, and two Justices of Peace may examine the same, &c. See the Statute of 1 H. 7. c. 7. See the third part of the Institutes, cap. Felony.

If a Forrestership or a Bailiwick of a Forrest be granted in fee, if it be found out at an Cir for the Forrest, that the grantee hath misdona in his Bailiwick, the Bailiwick is forfeited. Nota, The Justices in Cir have power to enquire thereof. In these offices of Forresterships or Bailiwicks in fee within a Forrest, albeit they have an absolute fee simple therein, yet are they of such trust, that they

8 E. 3. Itin. Pick. Hugh Laymers case, fol. 113. & 19 H. 7. cap. 11. In this Act see the great penalty for keeping of Nets called Deer-hayes and Buck-stalls by any that hath not any Forrest, Park, or Chase. * 26 Ass. p. 60.

-----Pedibus timor addidit alas : but yet the Deer are the most fearful.

Dente tuetur aper, defendunt cornua taurum,
Imbellis Damæ quid nisi præda sumus?

Martial.

Having spoken somewhat de Venatione, it followeth that we should say somewhat de Viridi, because the Statute saith, Tam de Viridi, quam de Venatione, and other Statutes speak of Wert and Wenison.

* Viridis, Grænhue, à viriditate, the French calleth it Wert, and we Wert, whatsoever beareth græne leaf, but specially of great and thick covert. And Wert is of divers kinds, some that beareth fruit that may serve as well for food of a man as of beasts, as Pear trees, Chestnut trees, Apple trees, Service trees, Nut trees, Crab trees, &c. and for the shelter and defence of the Game: some called Haut-boys, serving for food and browse of and for the Game, and for the defence of them, as Oaks, Beches, &c. Some Haut-boys, for browse and shelter and defence only, as Ashes, Poples, &c. Of Sub-boys some for browse and food of the Game, and for shelter and defence, as Maples, &c. Some for browse and defence, as Birch, Sallow, Willow, &c. Some for shelter and defence only, as Alder, Elder, &c. Of bushes and other vegetables, some for food and shelter, as the Hawthorne, Blackthorn, &c. Some for hiding and shelter, as Hazels, Gorse, Heath, &c. To sum up all, Plantarum tria sunt genera: Arborea, Arborecentes, & Herbæ. Arborea, as Haut-boys, & Sub-boys. Arborecentes, as Bushes, Hazels, &c. Herbæ, as Herbs and Weeds, which albeit they be græne, yet our legal Viridis extendeth not to them.

A Viridi cometh, as hath been said, Viridarii, because their office is to see to the preservation of Wert, which in troth is the preservation of Wenison. The Poet speaking to the trees, saith,

Quercus es in sylvis pulcherrima, Pinus in hortis,
Populus in fluviis, Abies in montibus altis.

See for the punishment of trespass done de Viridi, either in the Kings woods, or in the woods of the Subject, *Consuetud' & Assis' Forest'*, ubi supra.

The Philosophical Poet in describing the most delightful pleasures of woods, &c. and Grænhue, saith,

Devenere locos lætos, & amæna vireta
Fortunatorum nemorum, sedesque beatas.

Virgil.

And because it should be hard and difficult that any man should hunt and kill the Kings Deer in his Forrest and pass away without discovery, unless there were Procurers, Plotters, Assisters and Receivers: By the Law of the Forrest, whosoever receiveth within the Forrest any such Malefactor either in hunting or killing, knowing him to be such a Malefactor, or any flesh of the Kings Wenison, knowing it to be the Kings; in this case he is a principal trespasser, wherein the Law of the Forrest differeth from the Common Law, for by the Common Law he that receiveth a trespasser and agreeth to a trespass after it be done, is no trespasser, unless the trespass was done to his use, or for his benefit, and then his agreement sublequent amounteth to a commandment, for in that case, Omnis rati-habitio retrahitur & mandato æquiparatur, but by the Law of the Forrest such a Receiver is a principal Trespasser, though the trespass was not done to his use, as well as the Procurers and Plotters; but by the Common Law in case of Felony such a Receiver is but an Accessary. But in the case abovesaid, if the receipt be out of the Forrest, he cannot be punished by the Law of the Forrest, because it is out of the jurisdiction of the Forrest, which jurisdiction is local. And seeing the jurisdiction of the Forrest is local, the Law of the Forrest hath provided, that the Forrest should be inclosed by metes and bounds, which indeed are the inclosure of the Forrest: for as Parks are inclosed with wall, pale or hedges, so Forrests and chases are inclosed by metes and bounds; and as a Park cannot be a Park without such an inclosure in deed, as is abovesaid, so it can be neither Forrest nor

De viridi, viretum
viretum, &c.
Cart. de Forest.
cap. 8. 16.
1 E. 3. cap. 8.
* Consuet. & Assisa
de Forest. 6 E. 1.
cap. 1. 20. 21.
Hil. 13 E. 3. Coram
Rege Rot. 103.
Virgil. Iur in an-
tiquam sylvam sta-
bula alta ferarum.
a Deut. 20. v. 19.
b Consuet. & Assisa
Forest. 6 E. 1. c. 2.
& 20.

¶ Of Principal and
Accessary.
8 E. 3. Trin. Pick-
10. 3. & 5.

12 E. 4. 9. 15 E. 4.
15. b. 14 H. 6. 25,
27. 37 All. 8.
38 All. 6. 38 E. 3.
18. 13 H. 7. 12. 13.
Nota, that in the
highest and lowest
offences, viz. High
Treason and Tref-
passe, there are no
Accessaries, but in
Felony which is
between both,
there be Accessa-
ries both before
and after.
See the 3 part of
the Instit. Cap.
Principal and
Accessary.

¶ t

Chase

Chafe without an inclosure in Law, that is, by metes and bounds. Metæ sunt clausuræ Forestarum & Chacearum : and Foresta est locus in quo feræ includuntur, venandi ergo, solis metis. And where by the Statute of 6 E. 1. cap. 18. it is provided, quod omnes metæ Forestæ sint integræ domino regi, that is so to be understood, quoad jurisdictionem & imperium, & non quoad dominium: for if Rivers or High-ways be bounds, as most commonly they be, yet the King hath no more interest in the Soil, Way, River, or Fishing, then of right he ought, but only for his jurisdiction of his Forrest, which extendeth over the whole Way, River, &c. And where Mills and other houses, trees, &c. of other men, and such like, be metes and bounds of the Forrests, yet thereby the King hath no interest in such Mills, houses or trees, &c. And therefore old Woodmen have divided metes, quoad jurisdictionem & imperium, into metes inclusive, as Ways, Rivers, &c. and into metes exclusive, as Churches, Church yards, Chappels, Mills, Houses, Trees, &c. which bound the Forrest, but are excluded from any jurisdiction : and that the said Law of 6 E. 1. is intended only of metes inclusive ; if any man kill or hunt any of the Kings Deer in any part of the River, High-way, &c. being an inclusive boundary of the Forrest, he is as great an offender, as if he had killed or hunted within the main continent of the Forrest, albeit the state and interest of the soil of the High-way or River be in other men ; but neither of these kinds of metes and bounds are removeable, because they are the inclosure of the Kings Forrest, and if either of them be removed, it is punishable by the Laws of the Forrest. This word meta is only used in this Statute : In ancient perambulations and records you shall read secundum metas, mæras, bundas, & * marchias forestæ. Mera is fetched from the Saxon word mere, and that of μέρα Græce, which signifieth to divide or bound. Bunda a bound is derived from the Saxon word Bunna, signifying a higher thing, as Mills, Houses, Trees, &c. Marchia is derived from the Saxon word March, now a mark. Sed meta accipitur pro quocunque termino, limite, seu fine.

* 8 E. 3. Irin' Pick.
fo. 6.
Mera.
Bunda.
Marchia.
Meta.

Virgil.

His ego nec metas rerum, nec tempora pono.

Regist. Judic. 35, 36
Dier 16 El. 326,
327.

And it is to be observed, that a man may have a free Chase as belonging to his Mannor in his own Woods, as well as a Warren or Park in his own ground; for the Chase, Warren and Park are collateral inheritances, and not issuing out of the soil, as the Common doth, and therefore if a man hath a Chase in other mens grounds, and after purchase the grounds, the Chase remaineth.

¶ Perambulations
of Forrests accord-
ing to the ancient
metes and bounds.
Vid. sup. pag. 302.

After Easter following the Parliament holden in February, Anno 9 H. 3. according to the Statute of Carta de Foresta, Hugh de Nevil, and Brian de Lisle were appointed Commissioners to take Inquisitions of the ancient metes and bounds of such Forrests, as either H. 2. or any King after had enlarged. And in the Reign of H. 3. divers Perambulations and Deaforrestations were made, and many other in the reigns of H. 3. E. 1. E. 2. and E. 3. &c. All which were returned into the Chancery, and remain of Record in the Tower.

Rot. Par. Anno
9 H. 4. m. 40.

The Commons of Herefordshire pray remedy against the evil customs of the Forrest of Ewyastone; namely, for taking their Cattel coming thereunto as forfeit. Whereunto the Royal answer of the King in Parliament was in these words, The old good Laws and Customs of the Forrest to be observed, and the contrary forbidden by a Writ under the Privy Seal. Regalis fanè & digna Plantagenestorum genere sententia, wherewith we will conclude, that new opinions of new Authors, or single opinions of Readers grounded upon the Authorities of our Books or Judicial Presidents, are not to be allowed, but the Laws both good and old, and specially the Statute of Carta de Foresta, and other Statutes, and the resolution of the Judges thereupon are to be duly observed. See also the old and just Articles of the charge in Fleta lib. 2. cap. 35. and reject all new inventions without warrant of Law.

Not. the Charge
and Articles in-
quirable by the good old Law of the Forrest, which is worthy to be advisedly read and followed. Vid. Lib. 2. fo. 80.
Lib. 137, 138. Lib. 9. 49, 50.

Two of the principal and ancient Articles, the one concerning Venison, and the other concerning Wert, be, First, that the chief Forrester at the Justice Seat ought to answer for all manner of Venison delivered by warrant, or otherwise, in this manner: The Twelve Jurors ought to present before the Justices in Eyre the number of Deer that have been killed since the last Eyre, and then the chief Forrester is to answer by what warrant the same were killed, and such warrants as are lawful ought to be allowed, and such as be unlawful are to be disallowed. Secondly, the Twelve Jurors shall present what Oakes, Trees, and other woods have been felled and delivered out of the Forrest by the Officers of the same, and they to answer and shew by what warrants the same were done; whereupon it will appear whether the warrants be sufficient or no, the truth whereof shall be enquired by the Forresters, Verderers and Regarders. But these or any other Minister of the Forrest are not to be returned of any Jury out of the Forrest.

The Laws of the Forrests of England are certain, and established by Authority of Parliament, and not, as in other Countries, changeable and floating in uncertainty, ad principis placitum.

For the antiquity of such Forrests within England as we have treated of, the best and surest argument thereof is, that the Forrests in England (being in number 69.) except the new Forrest in Hampshire erected by William the Conqueror, as a Conqueror, and Hampton Court Forrest by H. 8. by Authority of Parliament, are so ancient as no Record or History doth make any mention of any of their erections and beginnings.

Our Ancestors the Saxons called a Forrest Buckholt, i. sylva ferina or cervina; We dare not fetch our kind of Forrest, as some do, from the holy History of Scripture, for therein we find no such Forrests as we have. And it is worthy of observation that in the Customary of Normandy Cap. 10. fo. 17. b. Le seneschal au Prince visiteit les forests & hayes du Prince & ronoquoit les forseits, &c. So as we fetch not our Chief Justice of the Forrest from Normandy, where the Kings Steward was the Chief Judge of the Forrest.

And as Forrests are of great Antiquity, so the care and charge of them was in England always committed to great and honourable Personages, and the like was also in forrain Nations.

Si canimus sylvas, sylva sunt Consule dignæ.

Virgil.

For of ancient time the Consuls of Rome had the government of the Forrests, &c. But take Suetonius as he is, Ab optimatibus datam scribit operam ut Provincie futuris Consulibus minimi negotii, i. sylva collecti decernerentur: for to say the truth, Recreations should not be used as Professions and Trades, but to be used as Medicines, to make men more able and fit for higher and greater affairs, and therefore they are called Recreations, because they newly create spirits, tanquam instaurationes spirituum: but yet these pleasures are accounted inter res minimi negotii. Nonnulli principes immoderato venatus studio ita correpti, & corrupti sunt, ut ei omnia posthabebant magno dedecore & ingenti aliorum damno.

Hæc bis bina; canes & aves, servi atque caballi,
Dicantur dominos sæpe vorare suos.

And to say the truth, the Hunter sitteth on a Beast, he is compassed about with Beasts, and hunteth and chaseth Beasts: and therefore not to be used daily as a Trade. And it was justly provided by the Tenth Chapter of this Charter of the Forrest, Quod nullus de cætero amittat vitam pro venatione nostra, &c. Hereof John Salisbury speaking of hunting and Hunters saith, In tantum hujus vanitatis instinctu erupere, ut hostes naturæ fierent conditionis suæ immemores, divini judicii contemptores, dum in vindictam ferarum imaginem Dei exquisitis judiciis subjugarent, nec veriti sunt hominem pro bestiola perdere quem Unigenitus Dei redemit sanguine suo.

Johannes Sarum lib. 1. de nugis Curialium c. 4. Vid. 31 H. 8. c. 22. quod cito evanuit repealed 1 E. 6. ca. 12. 1 Mar. cap. 1.

Et 2

Thus

Duo clarissima
mundi lumina
Authoritas &
Ratio.

Manwood fo. 1.

Thus have we wandred in the wilderness of the Laws of the Forrest: Where in we have dissented from others, we have produced our Authorities, and shewd our Reasons, the two main lights and guides, which herein we have followed. We have faithfully published divers resolutions of the Judges concerning Forrests and Forrest Laws, wherewith we were well acquainted, which are the safest grounds to build upon. Many things which are evident by the Text of Carta de Foresta, and other Statutes concerning Forrests, we have not so much as touched, but left the same to the judicious Reader, whom we advise to beware to give credit to our new Authors, either vouching of Acts of Parliament, Book Cases, or Judgments in Cire, &c. for we have found many of them mistaken, vouched without warrant, or not understood, which the judicious Reader will soon find: nor to Carta de Foresta of King Canutus granted (as it is published in print) at a Parliament holden at Winchester, Anno Domini 1016. We confess that in that year, which was the first year of his reign, he held a Parliament at Winchester, and made divers Laws as well for the honour and worship of Almighty God, as for the good government of his people, which he published in the Saxon Tongue, (neither do we read, that he ever published any Law for England in the Danish tongue, as they affirm he did this.) In all these Laws he never maketh mention of this Carta de Foresta, or of any of these supposed Laws of the Forrest therein contained, which he had just occasion to do; for amongst his other Laws at the same Parliament, he maketh this Law in the 77 Chapter in the Saxon Tongue, which is thus translated into Latine: *præterea autem concedo ut in propriis ipsius prædiis quisque tam in agris quam in sylvis excitet agitetque, feras autem meas ne venerit cum poena præcipio.* Now in the supposed Carta de Foresta of King Canutus, in the 30 Chapter, it is thus contained: *Volo ut omnis liber homo pro libito suo habeat Venerem seu Viridem in planis suis, sine Chasea tamen: & devitent omnes meam ubicunque eam habere voluerit.* Which we hold greatly to differ from the true Law before rehearsed in two respects. First, that the true Law extended to Woods as well as to Plains, and this to Plains only. Secondly, by that they might hunt, &c. by this they cannot; therefore we leave that Carta de Foresta of King Canutus, as justly suspected, till we receive better proof of them: whatsoever it be it is of little use, for so many of the Chapters therein as be contrary to, or differing either from our Magna Carta de Foresta, or any other Act of Parliament, are certainly of no force.

Thus have we as briefly as we could, treated of the Courts of the Forrest, and incidently of such Forrest Laws as now stand in force; wherein (as the studious Reader may well perceive) we have respected matter more then method. See Carta de Foresta Anno 9 H. 3. & Cart. 17. Regis Johannis. Matth. Par. pag. 264.

CAP. LXXIV.

*Of Ecclesiastical Courts, anciently called Halimots,
(i. Holy Courts) Circgemots, or Chircgemots.*

Where some may doubt, how we that profess the Common Law should write of Ecclesiastical Courts, which proceed not by the rules of the Common Laws. To this we answer by god authority in our Books, that the Kings Laws of this Realm do bound the jurisdiction of Ecclesiastical Courts, and that the King is well apprised of all ^a his Judges which he hath within his Realm, as well Spiritual as Temporal, as Archbishops, Bishops, and their Officers, Deans, and other Ministers, which have ^b Spiritual jurisdiction. And that the Popes Collector or Minister (so say our ancient Books) had no jurisdiction within the Realm.

And it is declared by the King, the Lords Spiritual and Temporal, and the Commons in full Parliament, ^c That the Spirituality (now being usually called the English Church) always hath been reputed, and also found of that sort, that both for ^{*} knowledge, integrity and sufficiency of number it hath been always thought, and is also at this hour sufficient and met of it self, without the intermedling of any exterior person or persons, to declare and determine of such doubts, and to administer all such offices and duties as to their rooms ^d Spiritual both appertain: for the due administration whereof, and to keep them from corruption and sinister affection, the Kings most noble Progenitors, and the antecessors of the Nobles of this Realm have sufficiently endowed the said Church both with honour and possessions. And the Laws Temporal for trial of property of lands and goods, and for the conservation of the people of this Realm in unity and peace, without rapine or spoil, was and yet is administered, adjudged, and executed by sundry Judges and Ministers of the other part of the said body politic, called the Temporality: and both their authorities and jurisdictions do conjoin together in the due administration of Justice, the one to help the other.

Of what things the Clergy hath Spiritual jurisdiction, is evident in our Books, and particularly in Cawdries Case, whereof there is no question. And certain it is, that this Kingdom hath been best governed, and peace and quiet preserved, when both parties, that is, when the Justices of the Temporal Courts, and the Ecclesiastical Judges have kept themselves within their proper jurisdiction, without inroaching or usurping one upon another; and where such inroachments or usurpations have been made, they have been the seeds of great trouble and inconvenience; for preventing and avoiding whereof, we have composed this Treatise of the Ecclesiastical Courts of the Realm.

The Adversary hath made divers objections against our Archbishops and Bishops made about the beginning of the reign of Queen Elizabeth, and by consequent against the Bishops ever since. ^e First, That they were never consecrated according to the Law, because they had not three Bishops at the least at their consecration, nay never a Bishop at all, as was pretended; because they being Bishops in the reign of E. 6. were deprived in the Reign of Queen Mary, and were not, (as was pretended) restored before their presence at the consecration. These pretences being (in troth) but meer cavils, tending to the scandal of the Clergy (being one of the greatest States of the Realm, as it is said in the Statute of 8 Eliz. c. 1.) are fully answered by the said Statute, and provision made by authority of that Parliament for the establishing of the Archbishops and

2 H. 4. 9.
Rot. claus. 4 H. 4.
m. 11. optime.
Rot. claus. 11 E. 2.
Dorf.
^a Nota, the Kings
Judges.
^b Spiritual jurisdiction.

^c 25 H. 8. cap. 21.

^{*} If so, then much more at this day.
See before pag. 43.

^d The Spiritual jurisdiction.

The Temporal jurisdiction.

Of what things they have jurisdiction.
Articuli Cleri per totum, lib. 5. fol. 1. Caudries case.

See before cap. of the Chancery, the Articles against Cardinal wolsey.
Art. 1. 13, 14. 17. 18, 19. 22. 24, 25. 29, 30.
Bract lib. 5. c. 2. & c. Britton fol. 10. b. Rot. Parl. 15 E. 3. nu. 22.
^e See Dier. Mich. 6 & 7 Eliz.
8 Eliz. cap. 1.

Parker in libro de
antiquitate Brit-
tannicæ Ecclesiæ.
sub titulo Mat-
theus. Imprinted
1572. 13 Eliz.

39 Eliz. cap. 8.

and Bishops both in presenti and in futuro, in their Bishopricks. Of this Sta-
tute Archbishop Parker in his Book De antiquitate Britannicæ Ecclesiæ speak-
ing of himself saith, Anno domini 1559. Cantuar' Episcopus electus est a Decano
& capitulo Ecclesiæ Metropolitice Cantuar': posteaque eodem Anno 17 Decembris
adhibitis quatuor Episcopis, &c. lege quadam de hac re lata, requisitus, consecra-
tus est. Another objection was made against our Archbishops and Bishops, for
that the Commission (being never thrilled) whereby the Bishops made in
Queen Maries time were deprived before the fourth year of the reign of Queen
Elizabeth, or the Record of the approbation of them cannot be found: & therefore
it was pretended that the Archbishops and Bishops made by Queen Elizabeth,
living the former, should be no lawful Bishops. But by the Statute of 39 Eliz.
cap. 8. the Archbishops and Bishops are adjudged lawful, as by the said Act ap-
peareth. And by these two Statutes, these and all other objections against our
Bishops are answered, which we have thought good to remember, seeing we are
to treat of their jurisdiction, ut obstruatur os iniqua loquentium.

¶ Of the Court of Convocation.

The Name.
F. N. B. 269. 8.
Register fo.
See the first part
of the Institutes
Sect. 133.
23 H. 8. cap. 1.
32 H. 8. cap. 23.
& 33 H. 8. ca. 31.
Anciently called
Churchgemote.
Int. leges Hen. 1.
cap. 8. Quosque
Churchgemot discordantes inveniet, vel amore congreget, vel sequestret iudicio. * 21 E. 45, 46.

It is called the Convocation of the Clergy. In England there being two
Provinces, the one of Canterbury and the other of York, the Bishops and
Suffragans belonging to York, are the Bishops of Duresme, Carlisle, Chester
and the Isle of Man, and all the rest of the Bishops are within the Province of
Canterbury.

In domo Convocationis the whole Clergy of either Province are either pre-
sent in person, or by representation: * but these Provinces
and they only sit in the Parliament time, and this consisteth of two parts, viz.
the Upper house, where the Archbishops and Bishops sit, and the Lower house
where the rest do sit.

Beda.
¶ The Antiquity.
Newburgh lib. 2.
c. 13. Bract. lib. 3. fo. 123, 124. 6 H. 3. Hol. 203. Rot. Parl. 18 E. 3. nu. 1. Rot. Parl. 2 H. 4. nu. 29. F. N. B. 269. 8 H. 6. c. 1.

Anno Domini 686 Augustine assembled in Council the Brittain Bishops, and
held a great Synod.

¶ By what Autho-
rity assembled.
13 E. 3. Rot. Parl.
16. 24. Dors. clau.
17 E. 2. m. 30, 31.
25 H. 8. cap. 19.
¶ What their juris-
diction was.

The Clergy was never assembled or called together at a Convocation but by
the Kings * Writ, adjutoria Regis, as Beda saith, ubi supra, Vid. Parl. 18 E. 3.
nu. 1. Int. leges Inæ Anno Domini 727. a Convocation of the Clergy called Mag-
na servorum Dei frequentia.

Their jurisdiction was to deal with Heresies, Schismes, and other mæ-
spiritual and Ecclesiastical causes, and therein they did proceed juxta legem di-
vinam, & Canones sanctæ Ecclesiæ. And as they could never assemble together
of themselves, but were always called together * by the Kings Writ, so were
they oftentimes commanded by the Kings Writ to deal with nothing that con-
cerned the Kings Laws of the Land, his Crown and dignity, his Person, or his
State, or the State of his Council or Kingdom: as to illustrate this matter to
remember one or two examples.

Merton cap. 9.
21 E. 4. 45. 1. per
Vavasor. & b. per
Starkey, Brown,
& Vavasor. 20 H. 6.
13. 34 H. 6. 39.
28 H. 6. 11. Regist. fol. F. N. B. 269. a. De procurat. Cler. See in the Chapter of the [High Court of Parliament,
Regist. 261. F. N. B. 229. a. & Parl. 6. E. 3. nu. 6. 8 H. 6. cap. 1. * 2 Chron. 29. 15. Exechias. Numb. cap. 10.
ver. 1, 2. vid. sup. pa. 43.

Rot. Pat. 18 H. 3.
2. part m. 17.
De prohibitione
fact. Episcopis.

Mandatum est omnibus Episcopis qui conventuri sunt apud Gloucestriam die
Sabbathi in crastino Sanctæ Katharinæ firmiter inhibendo quod sicut Baronias suas
(quas de Rege tenent) diligunt, nullo modo præsumant consilium tenere de ali-
quibus quæ ad coronam Regis pertinent, vel quæ personam Regis vel statum suum,
vel statum concilii sui contingunt. Scituri pro certo quod si fecerint, Rex inde se
capiet ad Baronias suas. Teste Rege, &c.

¶ See

See the Statute of Carlisle Anno 35 E. 1.

Rex, &c. Venerabilibus in Christo patribus eadem gratia W. Archiepiscopo Cantuariensi, totius Angliæ Primati, ac cæteris Episcopis & Prælati Cant' Provincie ad Concilium provinciale apud London' in proximo conventuris. Mandamus vobis in fide & dilectione quibus nobis tenemini firmiter inhibentes ne in dicto Concilio quicquid in nostri, aut status Coronæ nostræ vel Regni nostri præjudicium statuatis, faciatis, seu quoquo modo libet ordinetis. Teste Rege, &c.

De isto negotio scribitur præfatis Prælati per literas de credentia, ut in Rotulo clausurarum sub eodem Datu continetur.

Prohibitio fact' Archiepiscopo Cant' & Clero conventur post festum Sancti Barth. quod nihil attemptent in præjudicium Coronæ.

Vide Cap. Of the High Court of Parliament, pag. 4. & 5. a. for Procuratores Cleri, & 21 R. 2. cap. 2.

And further the King did often appoint Commissioners by Writ to sit with them at the Convocation, and to have consuls of such things as they meant to establish, that nothing should be done in prejudice, ut supra. * And therefore the Statute of 25 H. 8. c. 19. (whereby it is provided, that no Canons, Constitution, or Ordinance should be made or put in execution within this Realm by authority of the Convocation of the Clergy, which were contrariant or repugnant to the Kings Prerogative Royal, or the Customs, Laws, and Statutes of this Realm) is but declaratory of the old Common Law.

Mar. cap. 8. the Prerogatives, and Laws of the Crown saved. *Versus finem.*

But by the said Act of 25 H. 8. their jurisdiction and power is much limited and straitened concerning their making of new Canons: for they must have both license to make them, and after they be made, the Kings Royal assent to allow them, before they be put in execution. But in the end of that Act there is an express Proviso, that such Canons as were made before that Act, which be not contrariant nor repugnant to the Kings Prerogative, the Laws, Statutes or Customs of the Realm, should be still used and executed as they were before the making of that Act. But before that Act a Disme granted by the Clergy at the Convocation, did not bind the Clergy before the Kings Royal assent.

King H. 8. was acknowledged Supream Head in divers Convocations.

And if any cause shall depend in contention in any Ecclesiastical Court which may or shall touch the King his Heirs, or Successors, the party grieved shall or may appeal to the Upper house of Convocation within 15 days after sentence given.

As there be two houses of Convocation, so are there two Prolocutors, one of the Bishops of the Higher house, chosen by that house, another of the Lower house, and presented to the Bishops for their Prolocutor.

It is called Convocation à Convocando, because they are called together by the Kings Writ.

The Clerks of the Convocation called by the Kings Writ, and their servants and familiars shall have such privilege in coming, carrying, and going, as the great men, and Comminalty of this Realm, called to the Kings Parliament.

Of Subscription.

Subscription required by the Clergy is twofold: one by force both of an Act of Parliament confirming and establishing the 39 Articles of Religion agreed upon at a Convocation of the Church of England, and ratified by Queen Elizabeth under the Great Seal of England. Another by Canons made at a Convocation of the Church of England, and ratified by King James, as is aforesaid.

By the Act of 13 Eliz. cap. 12. referring to Canons made by the Clergy of England at a Convocation holden at London in Anno Domini 1562. containing 39 Articles of Religion, ratified as is aforesaid.

Stat. de Carlisle 35 E. 1.

Rot. Pat. 15 E. 2. 1 part. m. 8. pro Rege de inhibiti- one facienda.

6 E. 3. dorf. claus. part. 2. m. 15 &c.

51 E. 3. nu. 42.

46 E. 3. prem. 8.

21 E. 4. 45. ubi sup.

Rot. Parl. 1 R. 2.

nu. 114.

* 25 H. 8. cap. 19.

19 E. 3. Quare non admittit acc'.

10 H. 7. 6. per

Brian. & 2 Ph. &c.

Versus finem.

¶ what their juris- diction now is.

2 R. 3. 4. 21 E. 4.

42. 47. 20 H. 6. 13.

26 H. 8. cap. 1.

24 H. 8. cap. 12.

1 Eliz. cap. 1.

8 H. 6. cap. 1.

13 Eliz. cap. 12.

At a Convocation

holden at London

An. Dom. 1562. &c.

40 Eliz.

The

At a Convocation
begun at London,
An. Domini 1603.
1 Jac Regis §. 36.

This Book is rati-
fied and confir-
med by Act of
Parliament, viz.
2 E. 6. c. 1. 5 E. 6.
c. 1. 1 El. c. 2. 8 El.
c. 1. 23 El. cap. 1.

Dier 23 El. 377.
Lib. 6. fol. 69.
Grenes case.
* Smiths ca. c.

The other is by Canons of the Church of England made and ratified by King James, as is aforesaid.

The subscription hereby required is to three Articles.

The first is, That the Kings Majesty under God is the only supreme Go-
vernoz of the Realm, and of all other his Highness Dominions and Coun-
tries, &c.

2. That the Book of Common Prayer, and of ordering of Bishops, Priests,
and Deacons, containeth nothing in it contrary to the Word of God, &c.

3. That he alloweth of the said 39 Articles of Religion, and acknowledgeth
them to be agreeable to the Word of God.

And in this Section, Ubi supra, 1 Jac. The form of the subscription is set
down, which was not expressed in the Act of 13 Eliz.

By the Statute of 13 El. the Delinquent is disabled and deprived ipso facto,
but the Delinquent against the Canon of King James is to be proceeded withal
by the censures of the Church. This Statute of 13 is well expounded in Dier
23 El. 377. & lib. 6. fol. 69. in Grenes case.

And I heard Wray Chief Justice in the Kings Bench, * Pasch. 23 El. report,
that where one Smith subscribed to the said 39 Articles of Religion, with this
addition (so far forth as the same were agreeable to the Word of God) that it
was resolved by him, and all the Judges of England, that this subscription was
not according to the Statute of 13 Eliz. because the Statute required an abso-
lute subscription, and this subscription made it conditional; and that this Act
was made for avoiding of diversity of opinions, &c. And by this addition the
party might by his own private opinion take some of them to be against the
Word of God; and by this means diversity of opinions should not be avoided,
which was the scope of the Statute, and the very Act it self made touching Sub-
scription hereby of none effect.

He must also bring a testimonial from men known to the Bishop, to be of
sound Religion, a testimonial both of his honest life, and profession of the Do-
ctrine expressed in the said Articles; and he ought to be able to answer, and ren-
der to the Ordinary an account of his Faith in Latin, &c.

Besides this subscription, when any Clerk is admitted and instituted to any
Benefice, he is sworn to Canonical obedience to his Diocesan.

¶ Of the High Commission in causes Ecclesiastical.

Pasch. 9 Jac. the
resolution of the
Court of Common
Pleas upon ma-
ture deliberation,
set down in writ-
ing by the com-
mandment of
King James.

Two questions have been made concerning the Jurisdiction of these Com-
missioners.

First, What causes do belong to the High Commissioners by force of the Act
of 1 El. cap. 1. and of the Letters Patents thereupon grounded.

Secondly, In what cases the High Commissioners by the said Act of 1 Eliz.
cap. 1. and of the Letters Patents to them granted, may impose fine and impri-
sonment, and in what not.

It is said, by force of the Statute of 1 El. for that before this Act it is agreed,
that all Ordinaries and Ecclesiastical Judges whatsoever, ought in all Ecclesi-
astical causes to have proceeded according to the censures of the Church, and
could not in any case have punished any Delinquent by fine or imprisonment,
unless they had authority so to do by Act of Parliament. And the Papal au-
thority (as hath been confessed) did never fine or imprison in any case, but ever
proceeded only by Ecclesiastical censures. Seeing then the state of the question
concerning fine and imprisonment dependeth wholly upon the Statute of 1 Eliz.
and is of greatest consequence, and openeth the way to the other question, for it
is confessed that by Letters Patents only (without an Act of Parliament) such
power to fine and imprison in Ecclesiastical causes cannot be granted, the point
of fine and imprisonment shall be first handled. And for that every Act of Par-
liament doth consist of the letter, and of the meaning of the makers of the Act:
the

the Act of 1 Eliz. doth neither by meaning nor letter give any power to the High Commissioners to fine or imprison any, but in certain particular causes, as shall manifestly out of the Act itself appear hereafter. And seeing every Act of Parliament upon consideration had of all the parts thereof together, is the best Exposition of it self, the parts of this Act of 1 Eliz. do necessarily fall into consideration.

First, the Title of the Act is, *An Act restoring to the Crown the ancient Jurisdiction, &c.* By this the nature of the Act doth appear to be an Act of Restitution. *The title of the Act.*

And this is also manifest by the preamble of the Act, where it is said:

Whereas divers good Laws were made in the time of the late King Henry the Eighth, for the extinguishment of all forrain power, and for the restoring unto the Crown of this Realm the ancient rights and Jurisdictions of the same. *The preamble of the Act.*

From whence this reason is drawn, that seeing the express letter and meaning is to restore to the Crown the ancient Jurisdiction Ecclesiastical, and no Commissioner by force of that ancient Ecclesiastical Jurisdiction could impose fine and imprisonment, that these Commissioners having their force from this Act of Restitution, cannot punish any part by fine or imprisonment, otherwise then shall be hereafter expressed. *1 Ratio.*

The first clause of the body of the Act (to let in the restitution of the ancient Right and Jurisdiction Ecclesiastical within the Realm) doth abolish all forrain Jurisdiction out of the Realm.

Then followeth the principal clause of restitution and uniting of the ancient Jurisdiction Ecclesiastical, being the main purpose of the Act, in these words.

Be it enacted, that such Jurisdiction, &c. Spiritual or Ecclesiastical, as by any Spiritual or Ecclesiastical power or authority hath heretofore been, or lawfully may be exercised or used for the visitation of the Ecclesiastical state and persons, and for reformation, order, and correction of the same, and of all manner of Errors, Heresies, Schisms, Abuses, Offences, Contempts and Enormities, shall for ever by Authority of this Parliament be united and annexed to the Imperial Crown of this Realm.

And upon this clause being the final intention of this Act expressed in the Title and Preamble, do the subsequent clauses depend; Therefore this clause is especially to be considered, and therein these things are to be observed.

First, that by this clause Queen Elizabeth was not declared Supream head, &c. but by a former clause in this Act, viz. that the Statute of 1 & 2 Ph. & Mar. cap. 8. (whereby amongst others, the Act of 26 H. 8. cap. 1. and 35 H. 8. cap. 3. were repealed) was by this Act made utterly void, and consequently the Act of Repeal being repealed, the Acts of 26 H. 8. cap. 1. and 35 H. 8. cap. 3. were amongst others implicitly revived, by which Acts of 26 H. 8. and 35 H. 8. It is declared and enacted, that the King, his heirs and successors, should be taken and accepted the only supream Head in Earth of the Church of England, and should have and enjoy annexed to the Imperial Crown of this Realm, as well the title and stile thereof, as all honours, dignities, preeminences, jurisdictions, &c. to the said dignity of supream Head belonging, &c. By which stile, title, and dignity of supream Head of the Church of England, King H. 8. his heirs and successors had and have all Ecclesiastical Jurisdiction whatsoever. So as the first clause reviving the Act of 26 H. 8. &c. thereby Queen Elizabeth, her heirs and successors were supream Head of the Church of England. And there this Act extending to raise a Commission for the necessity of the time, intended only to restore and anner to the Crown such Jurisdiction in some particular points as by the intent of the Statute, the Commissioners should execute, and not to de-

clare by this clause that her Majesty should be Supreme Head of the Church, for that was provided for before.

a Ratio.

Secondly, that no Jurisdiction is by this Act restored and united to the Crown, but such as before the Act had been, or lawfully might be exercised or used for the reformation, &c. correction, &c. Whereupon it is concluded, that seeing that no man could be fined or imprisoned by force of any Jurisdiction Ecclesiastical, which had been used, or lawfully might be used before this Act, that therefore by this Act no power of fining and imprisoning in Ecclesiastical causes is given by this Act.

The third observation is, that this clause divideth it self into two branches: the first concerning the visitation of the Ecclesiastical state and persons. This branch was enacted out of necessity, for that all the Bishops, and most of the Clergy of England, being then Popish, it was necessary to raise a Commission to deprive them, that would not deprive themselves, and in case of restitution of Religion to have a more summary proceeding then by the ordinary and proper course of Law is required. This branch only concerns Ecclesiastical persons: So as, as necessity did cause this Commission, so it should be exercised but upon necessity, for it was never intended that it should be a continual standing Commission, for that should prejudice all the Bishops of England in their Ecclesiastical Jurisdiction, and be grievous to the subject to be drawn up from all the remote parts of the Realm, where before their own Diocesan they might receive Justice at their own doors.

The first Commission upon these Statutes, whereby about 20 Bishops were deprived, and many others of the Popish Clergy, is said to be lost, and inrolled it is not, as it ought to have been. And it is affirmed by some that have seen it, that it passed not above twenty sheets of paper copy wise; but now the High Commission contains above three hundred sheets of paper. And it is likewise affirmed, that never any High Commission was inrolled (as they all ought to have been) until my Lord Chancellor Egertons time, so as no man before that time could know what their Jurisdiction was till that time.

The second branch is, And for reformation, order, and correction of the same (*that is, of Ecclesiastical persons*) and of all manner of Errors, Heresies, Schismes, Abuses, Offences, Contempts and Enormities.

So as these two branches extend not to the universality of the Supremacy, but only to those points whereunto the Commission to be raised by this Act should extend, for which purpose nothing is restored or united by this Act, but only the visitation of the Ecclesiastical state and persons, and the reformation of the same and of all Errors, Heresies, Schismes, Abuses, Offences, Contempts, and Enormities which be criminal.

The clause of Assignment of the Jurisdiction restored by this Act.

The Jurisdiction being restored to Queen Eliz. her heirs and successors, next and immediately both the Act, &c. give her power to assign and authorize Commissioners to execute this Jurisdiction restored and united to her, for which purpose it is further enacted, That your Highness, your heirs and successors shall have power and authority by virtue of this Act by Letters Patents, &c. to assign, name, and authorize, &c. such persons being natural born subjects, &c. as your Majesty, your heirs and successors shall think meet to exercise, use, occupy, and execute under your Highness, your heirs and successors, all manner of Jurisdiction, &c. in any wise touching or concerning any Spiritual or Ecclesiastical Jurisdiction, &c. and to visit, reform, &c. all errors, heresies, schismes, abuses, offences, contempts and enormities, which by any manner Spiritual or Ecclesiastical power, authority, or jurisdiction, can or may lawfully be reformed, corrected, restrained or amended.

Out of this clause of Assignment it is to be observed, that the substance of the Commission of assignment or deputation is described and purtrayed out both for manner and matter by this clause.

1. That

1. That it ought to be under the Great Seal.
2. The Commissioners to be assigned ought to be natural born subjects of Queen Eliz. her heirs or successors.
3. Their Authority, viz. To exercise, use, occupy and execute under your Highness, your heirs and successors, all manner of jurisdiction, &c. and to visit and reform all such Errors, Heresies, Schismes, abuses, offences, &c. which by any manner of Ecclesiastical or Spiritual power can, or lawfully may be reformed, corrected, &c.
4. The local limits and bounds of their Commission, viz. within the Realm of England, &c.

So as by this clause there is no question, but the Commissioners for such causes as are committed to them by force of this Act, may, if the Commissioners be competent, proceed to deprivation of the Popish Clergy, which was the main object of the Act, or to punish them by Ecclesiastical censures, and by no words, or meaning hitherto can punish by fine or imprisonment, for that no Ecclesiastical power could reform and correct (as the Statute speaketh) in that manner. And without question, if the Commissioners be competent, that is, if they be spiritual men, they may proceed to sentence of Excommunication, which may right well be certified as well as Excommunication before Commissioners Delegates; both of these Authorities being under the Great Seal, and each of them having authority by force of several Acts of Parliament. And Excommunication certified by Commissioners Delegates hath been allowed, as it appeareth in 23 Eliz. Dier 371. And in many cases Acts of Parliament have adjudged men excommunicate ipso facto. But if they be mere Lay men, the fault is not in the Statute or in the Law, but in the nomination: and upon Certificate made of the Excommunication according to Law, a Significavit or Cap. Excom. shall be awarded out of the Chancery, for the taking and imprisoning of the bodies of such Excommunicate persons.

The High Commissioners may excommunicate if they be competent.
Dier 23 El. 371.

Now after the Letters Patents of the Commission are described, and limited, followeth a clause of direction for the Commissioners to keep themselves within their Commission in these words.

And that such persons so to be named, &c. after the said Letters Patents to them delivered shall have power and authority by vertue of this Act, and the said Letters Patents under your Highness, your heirs and successors to exercise, use and execute all the premises according to the tenor and effect of the said Letters Patents, any matter or cause to the contrary in any wise notwithstanding.

The clause of Extension.

This is a clause of reference merely to the former parts of the Act, and yet by colour of this clause the High Commissioners do pretend to fine and imprison.

That this clause referreth wholly to the former parts of the Act, it is apparent by the very words thereof, for first, the words be to exercise, use, and execute all the premises, which word (premises) referreth to all the former branches of the Act, viz. 1. To the ancient jurisdiction Ecclesiastical, restored by this Act, by which ancient jurisdiction no person could be corrected by fine or imprisonment. 2. To such jurisdiction Spiritual or Ecclesiastical, as by any Spiritual or Ecclesiastical power hath heretofore been, or lawfully might be exercised, or used; for these be the express words of the main clause of restoring and uniting of the ancient jurisdiction to the Crown. But it is agreed, that before this Act no man could be punished by fine or imprisonment by any Ecclesiastical power, unless it were by force of some Act of Parliament; therefore by these words in this clause (to execute the premises) the Commissioners cannot fine or imprison. This word (premises) hath relation to these words in the clause of assignation next going before this clause, viz. to visit, reform, redress, order, correct, and amend all such errors, heresies, schismes, &c. which by any manner, power, authority, or jurisdiction Ecclesiastical or Spiritual can, or may lawfully be reformed, &c. corrected, &c. but no correction before this Act could be by fine or imprisonment, but in certain special cases.

* Premises.
* Said.

When this clause followeth, (according to the tenor and effect of the said Letters Patents) which words also do wholly refer to the former parts of the Act. For if these words (to execute all the * premises) be words of reference, then the addition of these (according to the tenor and effect of the * said Letters Patents, any matter or cause to the contrary in any wise notwithstanding) must of necessity be referred also to the former parts of the Act, by none of which power is given to fine or imprisonment.

Also this word (execute) cannot but be referred to the former authority. And it is not said according to the tenor and effect of any Letters Patents, and yet if the words had been so, the same being coupled to the word (premises) had not restrained them, for they could in that case but only have executed the premises; but the words be according to the tenor and effect of the Letters Patents before limited by the said Act, that is, first that the Letters Patents be under the Great Seal. 2. That they be made to natural born subjects. 3. Their authority is declared with a limitation. 4. The local limits and bounds of the Commission is set down: and this is the true and genuine sense of these words, viz. To execute the premises according to the tenor and effect of the said Letters Patents. And therefore we marvel how in a case of so great consequence, and so visible to every eye that looks into the Act of 1 Eliz. the very words thereof are (for the advantage of the High Commissioners) in the very binding clause altered, and changed. For there it is alledged, that the Statute of 1 Eliz. saith, that the High Commissioners shall execute the premises by virtue of this Act according to their Commission indefinitely without reference or restraint, whereas the words of the Act be, according to the said Letters Patents, the effect whereof was limited and expressed before. And by the authority that is claimed by the Commissioners, who say not, but that confiscation of Lands, forfeiture of goods and chattels, &c. as well may be imposed, as fine and imprisonment? But were it not a violent interpretation directly against the letter and meaning of the Act, and full of great inconvenience to make of these latter words this construction, viz. that the High Commissioners should correct and punish all the Errors, Heresies, Schismes, Offences, Abuses, Contempts, and Enormities, &c. under such pains, forfeiture and penalty, as Queen Elizabeth, her heirs and successors, by any Letters Patents, should impose or appoint: and that consequently by force of the generality of this construction, she did impose and appoint fine and imprisonment. Which construction should be first directly against the words and meaning of the Act for the causes aforesaid. Secondly, that by the same reason by the generality of such a construction Queen Elizabeth might have imposed forfeiture of lands, confiscation of goods, nay corporal punishment, loss of member, and of life also, for incontinency, solicitation of chastity, working on a Holiday, or any inferior offence punishable by the Ecclesiastical Law, and yet the sentence of the Commissioners in such cases should be both fatal and final, and uncontrollable by any ordinary means, either by Appeal, Error, Moderata misericordia, or otherwise. Thirdly, that this violent construction, under mystical and cloudy words, should extend to fine and imprisonment, &c. all persons, as well Lay men of what estate, degree, or sex soever, in cases Ecclesiastical (where they were not to be fined and imprisoned before) as to Ecclesiastical persons, who were the proper objects of this Act. And then by the Construction that hath been made of the other side in cases where an executor detaineth a Legacy, or a Parishioner payeth not his tithes, or the like concerning Meum and Tuum, the Queen, &c. might have indicted (as hath been said) what punishment she would, and the High Commissioners fine and imprisonment (as it standeth at this day) without limitation of time, be it never so great, or time of imprisonment, be it never so long, and without controlment by any ordinary remedy, be the sentence never so unjust or erroneous; then which nothing could be more absurd and inconvenient. Talis interpretatio in ambiguis semper fienda est, ut evitetur inconveniens & absurdum. But this construction should not be in ambiguis, but directly against the words and meaning of this Act. And seeing it hath been granted that the Papal authority

Nota.

rity of any other having Ecclesiastical jurisdiction could not fine and imprison before this Act of 1 El. and that it is expressly said in the preamble of this Act, that where in the reign of King H. 8. divers good Laws were made as well for the extinguishment of foreign authority, as for restoring to the Crown the ancient jurisdictions, &c. by reason whereof the subjects were kept in order, and disburdened of great and intolerable charges and exactions (which good Laws being repealed by Queen Mary the said Act doth revive and restore) It followeth a conclusion, and by the Letter of this Act, that it was never the meaning of the makers thereof to extend the said clause to fine and imprison the subject for Ecclesiastical causes, and to make him subject to greater confiscations, forfeitures, and punishments, where his body before this Act was not subject to imprisonment but upon the Kings Writ De excom. capiendo, nor his body, lands and goods, to fines, or other penalties, or punishments, by them to be imposed, &c. for this were not by this Act of restitution to ease them of former intolerable charges (as the Statute speaketh) but by this Act to make them subject to greater and more heavy pains, punishments and charges, then ever they were before. And the Statute of 27 H. 8. c. 15. saith, that the Canons, &c. were overmuch onerous to his Highness subjects, but they were never so onerous as this Act should be. *Uno absurdo dato infinita sequuntur.* We must therefore retire our selves to the text of the Act of 1 El. the only ground of this question, and thereupon the conclusion is, that no Letters Patents can by vertue of this Act of 1 Eliz. give any power to the Commissioners to imprison, except it be in certain particular cases, which now fall into consideration. For example, The Statute of 1 H. 7. cap. 4. doth give power to Bishops, &c. to commit Priests convicted of any incontinency to prison, and that no Bishop, &c. shall be chargeable therefore in an Action of false imprisonment. Now seeing that such jurisdiction Ecclesiastical that is, to hear, determine, and punish, &c.) as by any Spiritual or Ecclesiastical power or authority before the said Act of 1 Eliz. had been, or might lawfully have been exercised or used for the visitation of the Ecclesiastical state and persons, and for reformation and correction of the same, and of all manner of Errors, Heresies, Schismes, &c. and that every Bishop, &c. might punish such offenders by imprisonment according to the said Act, that such power (and the like in any other case by Act of Parliament if any be) is united to the Crown and may be committed over to the High Commissioners as before the said Act by any Spiritual or Ecclesiastical power had been or lawfully might be used, which be the words of the Act it self.

1 H. 7. cap. 4.

Vid. stat. of 2 H. 4. cap. 13. & 1 Eliz. cap. 1. and observe them well.

But these general words, *viz.* Which have been or lawfully might be used, &c. do not extend to any authority or power given by any Act of Parliament to any Ecclesiastical Judge: which Act stood repealed and annulled by a former Act of Parliament, and had no essence at the time of the making of this Act of 1 Eliz. and that for two reasons: First, For that this Act of 1 Eliz. doth repeal and revive divers Acts of Parliament, and therefore shall not be construed to repeal or revive any other by the said general words. Secondly: For that general words shall not extend to authorities repealed or annulled by Act of Parliament. And so it was adjudged in the Lord Darcies case in the Kings Bench Pasch 38 Eliz. where the case was, that the Lord of the Mannor of Thorp Kirby was amongst other franchises and immunities discharged by the Letters Patents of King E. 4. of Purveyance: which Charter for the point of discharge of purveyance was annulled by the Statute of 27 H. 8. cap. And after the Mannor comming to the hands of King E. 6. he by his Letters Patents granted the said Mannor to the Lord Darcie and his heirs; and further granted Tot, talia, eadem, hujusmodi & contrinilia jura, jurisdictiones, franchiseas, privilegia, &c. quot, quanta, qualia, & quæ, &c. prout aliquis Dominus manerii habuit, tenuit, seu gavisus fuit virtute alicujus cartæ, doni, seu concessionis aut aliquarum literarum patentium per præfatum regem, aut per aliquem progenitorum suorum quorumcunque facti concessi, seu confirmati, aliquo statuto non obstante. And it was adjudged as it had been before in the Lord Pagets case, Michael' 21 & 22 Eliz. in Scaccario: that albeit

Pasch. 38 Eliz. coram Rege the Lord Darcies case.

Mich. 21 & 22 El. in Scaccario, the Lord Pagets case.

such

such a general grant had been enacted and confirmed by Act of Parliament, yet had not those general words extended to revive any authority, franchise, privilege, &c. once granted, and which was after, and before the grant repealed or resumed by Act of Parliament, unless there had been special words to revive the same, but should extend to other authorities, franchises and privileges which stood not then repealed.

1 H. 7. 12, 13.

And there is a far stronger case reported in 1 H. 7. f. 12, & 13. By authority of Parliament all preeminences, prerogatives, franchises, and liberties were given to King H. 7. in tail generally without limitation or saving. And the question was, whether the franchises and liberties of Lords and other inferior subjects were given: and it was resolved by all the Judges that they were not, for that the Act was to be intended to do no inferior subject wrong, but the general words were to be intended of such as might be intailed without prejudice of the subject; which is a stronger case then this, for besides the prejudice of the inferior Ordinary for his jurisdiction, and for the subject for taking away his appeal, and drawing him from remote parts to his intolerable charge, where he might receive justice at home, the clause preceding of uniting, and latter particular words do limit and expound the generality of the former words.

Now that divers and many other Acts of Parliament, which are general in words, have upon consideration of the mischief, and all the parts of the Act (for the avoiding of the inconvenience and absurdity that might follow) received a particular interpretation, it appeareth in our Books in cases of far less inconvenience and absurdity.

Pl. Com. fol. 369.
Stowels case.

Pl. Com. in Stowels case f. 369. the Preamble is to be considered, for it is the key to open the meaning of the makers of the Act, and mischiefs which they intend to remedy. The Judges of the Law have ever in such sort perused the intents of the meaning of the makers of Acts of Parliament, as they have expounded Acts general in words to be particular, where the intent hath been particular (which are the words of the Book:) And therefore upon that rule it is there adjudged, that where the Statute of 7 E. 6. is general; if any Receiver or minister accountant, &c. receive of any person any sum of money for payment of any fees, &c. shall forfeit 6 s. 8 d. for every penny; that this do not extend according to the generality of the words to the Receiver of common persons, because these words subsequent be added (otherwise then he lawfully may by former laws and statutes.) Now the Judges restrained the generality to a particular, to the Kings Receiver only: for that no law or statute was formerly made concerning common persons Receivers, &c. But in the case in question, as well the precedent clause of restitution, as the subsequent clause expressing offences in particular, and the words in the same general sentence, viz. under your Highness, &c. and principally the cause of the making of this Act do qualify the generality of the words. And yet notwithstanding it was resolved by all the Court in the said case of Stradling, f. 203. a. that the Receiver of common persons were within the words of the said Statute. But there it is said, that if a man consider in what point the mischief was before the Statute, and what thing the Parliament meant to redress by this, he shall perceive that the intent of the makers of the Act was to punish only the Ministers of the King. And a little after the Judges say that the stile of that Act is. An Act for the true answer of the Kings Revenues. And by this also the intent of the makers of the Act is to be collected, and these be the words of the book, which is a far stronger case then the case in question.

4 E. 4. 4. & 12.

4 E. 4. f. 4 & 12. Every Statute ought to be expounded according to the intent of them that made it, where the words thereof are doubtful and uncertain, and according to the rehearsal of the Statute; and there a general Statute is construed particularly upon consideration had of the cause of making of the Act, and of the rehearsal of all the parts of the Act. To conclude this point with a general rule allowed by all Laws in construction of Statutes. *Quamvis lex generaliter loquitur, restringenda tamen est, ut cessante ratione & ipsa cesset; cum enim ratio sit anima vigorq; ipsius legis, non videtur legislator id sensisse, quod ratione careat, etiamsi*

etiam si verborum generalitas prima facie aliter suadeat. Seeing then so many inconveniencies againg reason, and the meaning of the makers of the Act should follow, it is evident that the generality of the said words in the clause of Assignment shall (as they ought) be limited by the clause of Restitution, as hath been said. And it agreeth not well with the stile of the High Commission to deal in petty and inferior causes. And for the recital of a Branch of this Act in the Statute of 8 El.c.1. It referreth to the Act of Primo it self, and is only in the Preamble, and therefore doth neither increase nor diminish the same. But albeit they have consuance and jurisdiction of enormous and heinous causes, according to the original institution, yet cannot they punish the offender in the same by fine or imprisonment, unless the same were punishable by fine or imprisonment before the making of the said Act of 1 Eliz. by some Act of Parliament unrepealed at the making of this Act.

But it is said (enormous) is uncertain; surely in an Act whereof many of the makers are Lay and unlearned men, it hath been expounded by Law to be equippollent to heinous, horrible and exorbitant. And this appeareth by the Statute of 2 E.3.c.2. Commission of Dier and Terminer, &c. shall not go out, but where the trespass is horrible. Now if such Commission be granted for a small cause, a revocation thereof, which is a flat prohibition, doth lye, as it appeareth in the Register 125, and the words thereof be, Quia non enormis latio. Which word (enormis) in that Writ doth express this word [horrible] in the said Act, and there is as great uncertainty in that case upon this word [enormis] to prohibit the Commissioners of Dier and Terminer, as in the case now in question concerning the Ecclesiastical Commission, and especially in this Act of primo it ought to be taken to be horrible, exorbitant, & extra omnem normam; for that the High Commissioners do claim to send for all degrees of men and women, and out of all the parts of England or Wales, be the place never so remote, &c. But the Commission of Dier and Terminer cannot be taken but in the proper County where the fact was done. And yet it is evident by all which hath been said, that his Majesty hath, and Queen Elizabeth before him had, as great and ample supremacy and jurisdiction Ecclesiastical as ever King of England had before them, and that had justly and rightly pertained to them by divers other Acts, and by the ancient Laws of England, if the said clause of Annexion in the said Statute of 1 Eliz. had never been inserted.

This Act of 1 Eliz. prohibiteth against them that should by printing, writing, or words, maintain or defend the jurisdiction Spiritual of any foreign Prince, Prelate, &c. within this Realm; that every such person being lawfully convicted by the course of the Common Law, shall for the first offence forfeit and lose all his and their goods and chattels. And if any person so convicted shall not be worth of his proper goods and chattels to the value of 20 l. then such person so convicted shall suffer imprisonment one whole year, &c. Now albeit upon the maintenance or defence of the Popes Supremacy depend so many mischiefs as the principal scope of this and other Acts was utterly to abolish and extinguish the same, and that it is High Treason in the second degree: yet see how temperately this Act doth punish that most dangerous and damnable error. And albeit the proceedings at the Common Law are reversible by Writ of Error; yet the Statute addeth two cautions, that no persons should be impeached for any of the offences by preaching, teaching, or words, unless they be lawfully indicted within the space of one half year. And if any person be imprisoned, and be not indicted within half a year, then the person so imprisoned, shall be set at liberty. Now if the party offending in so high and supream an offence, as the maintaining of the Popes Supremacy, shall be punished for the first offence so temperately, and with such caution and limitation, it was never the meaning of the Statute to charge the subject with fine or imprisonment by the discretion of the Commissioners without limitation either of time of imprisonment, or quantity of fine, for lesser crimes and offences, whereunto he was not subject before the making of this Act.

2 E.3. cap. 2.

But

But if the meaning of the *Statutes* of the *Act* had been to have inflicted new-ly upon the subject not only fine and imprisonment, but by the same reason confiscation of goods, forfeiture of lands, nay any corporal punishment, &c. they would not under such cloudy & dark words have inflicted those greater punishments for lesser offences without some limitation, as they did for the greatest offences of all, and not to have left lesser offences to the absolute and uncontrollable power of the High Commissioners by any ordinary mean.

If the High Commissioners might have fined and imprisoned men for offences against the Ecclesiastical Laws, to what end were the Statutes of 23 Eliz. 28 Eliz. &c. made against men for abstaining and not coming to Divine Service, &c. and why did those Acts inflict a penalty, of 20 l. the month, and imprisonment, &c. with a discharge of the penalty, &c. upon submission, if the High Commissioners might have fined and imprisoned them absolutely without certainty of any sum, or limitation of any time of imprisonment, and without any ability or power by submission or conformity to ease themselves? And yet absence from Divine Service is a mere Ecclesiastical cause; and the like may be said of divers other Acts of Parliament of like nature.

Thus hath this Statute been plainly expounded by the parts of the same, according to the natural and genuine sense, and the original institution and jurisdiction of the High Commission by force of the said Act truly expressed.

And concerning the form of Commissions and practice by the High Commissioners in the reign of the late Queen Eliz. by fining and imprisoning for adultery, fornication, simony, usury, defamation, &c. it may be that such fines have been imposed, but, as we be informed, not one of them levied in all the reign of Queen Eliz. by any judicial process out of the Exchequer in the time of Sir Edw. Sanders, who was Chief Baron at the time of the making of the said Act, Sir Rob. Bell, Sir John Jefferies, Sir Roger Manwood, or Sir Will. Peryam Chief Barons of the Exchequer: So as in all the late Queens time (as we be informed) no fine was levied, or any subject in his body, lands or goods charged therewith, which would not have been by so many worthy men assisted with divers other grave and learned Barons pretermitted to be either levied or written for by the Court, if by Law the same ought to have been levied. And the subjects (for the greatest part) being wrongfully fined, imprisoned, and injured by colour of the High Commission, asked no advice to take any ordinary remedy, for that the High Commissioners (knowing the weakness of their Authority) kept the Commission secret, and contrary to Law and justice suffered not the same to be introlled in the Chancery, so as the subject lived under an unknown Commission and Authority (& Misera est servitus ubi jus est vagum aut incognitum) until of late the Lord Chancellor (as hath been said) according to Law caused the same to be introlled; and very few upon serious consideration took an exact survey of all the parts of the Act of 1 El. And this is the cause why their Presidents (if they affirm truly) may be many, especially against the weaker sort: and the judgments and Presidents in the Kings Courts concerning these matters, few, as they give out, charging the Judges of the Realm with Innovation. And yet some being intollerably grieved, sometime to their utter undoing, by the High Commissioners, upon complaint made to the highest Courts of ordinary Justice in this Realm, the Judges upon consideration had of the Statute of 1 El. which is the foundation whereupon the High Commission is grounded, have, as often as complaint hath been made, relieved them according to Law and justice.

In *Atmeres* case the whole Court of Exchequer in the late Queens reign, specially resolved, being the Kings proper Court, that the High Commissioners could not punish any man for working on a Holy day, albeit it be a matter of Ecclesiastical conuance, but ought by the true meaning of the Statute of 1 El. to be punished by the Diocesan, which is to be seen of Record.

Also in the reign of Queen Eliz. William Taylor Clerk, Parson of Springfield in Essex did implead William Massey Gent. before the High Commissioners for giving unreverent speeches to the Minister, &c. for carrying his Coyn on Holy days,

Taylor's case.
Mich. 44 & 45 El.
Rot. 1255.
Simile 43 & 44.
El. Rot. 503.

days, for not suffering the Parson and Parishioners to come thozow his yard in Rogation week in the perambulation, and not giving them a repast as usually he had done, that he whiffled and knocked on the Parsons Earn door, and said he did it to make him musick for his daughters marriage, and many other Articles of like nature; and it was ruled upon open motion, and often debating by the whole Court of Common pleas, that the High Commissioners could not deal with such inferiour offences, but are to be left to the proper Diocesan, who is to reform the same with less charge and travel in the proper Diocess. And thereupon a Prohibition was granted by the Court of Common pleas, whereby it appeareth, that they cannot hold plea of all Ecclesiastical causes.

The like Prohibition was granted out of the Common pleas in the said late Quæns reign, between Robert Pool Clerk Parson of Winchelsey, and Thomas Gray, to the High Commissioners, for that they held plea for assaulting and laying violent hands on the said Robert Pool being a Parson, upon open motion and argument by the whole Court.

Hil. 3 Jac. Regis, in Communi Banco, between Lyn and Wats for promise of a yearly sum in marriage.

* Trin. 3 Jac. in Communi Banco, between Jeneway Parson of T. in Essex, and Porter for defamation and laying violent hands on a Clerk.

a And concerning fine and imprisonment, Anno 9 Regina Eliz. which was about eight years after the Statute of 1 Eliz. Sir James Dier and divers other of the Judges were then living, that were present at the making of the said Statute. Thomas Lee an Atturmy of the Common pleas, being convented before the High Commissioners for hearing of a Wasse, was by them in their proceedings committed to prison, which matter being returned by Habeas Corpus, he was upon great consideration had by the Lord Dier and the whole Court of Common pleas discharged of his imprisonment, for that the High Commission had no power to imprison him in that case.

The like resolution was in 18 Eliz. by the Lord Dier, and the whole Court of Common pleas, in the case of one Hinde, who being convented before the High Commissioners for Usury, to answer, &c. was thereupon imprisoned by them, and by Hab. Corpus delivered, for that the imprisonment in that case was unlawful.

By warrant from the High Commissioners in the Reign of Quæen Eliz. directed to Richard Butler Constable of Aldrington in the County of Northampton, for attaching and arresting of the body of John Simpson of Aldrington aforesaid, and bringing his body before the High Commissioners in case of Adultery with the wife of Edward Fuste, the Constable being assisted with one William Johnson servant of the said Edward Fuste, the said Constable with Johnson came to a Widows house in Aldrington where the said Simpson was, and the doors being open would have at eight of the Clock at night arrested Simpson by the said Warrant, which the said Constable read unto him, notwithstanding the said Simpson resisted them; and in his own defence (and shewed how) slew the said Johnson that came in aid of the said Constable. Now the question before the Justices of Assise of that County, (Simpson being in the Gaol therein) what his offence was? wherein the doubt rested in this, whether the Constable might lawfully attach and arrest the body of the said Simpson, (which in Law is an imprisonment) for if he had lawful authority to arrest him, then the offence was wilful murder in killing one that came in aid of a Minister of Justice in execution of his office: but if the Constable had no lawful authority to arrest his body by force of the High Commissioners Warrant, then was it but se defendendo, a small offence, which doubt wholly consisted upon construction of the Statute of 1 Eliz. for by the Letters Patents express authority is given to the High Commissioners to send for the body of any offender, &c. by Pursivant, or by Warrant. The matter being weighty, and the said Simpson being by the Coroners inquest indicted of wilful murder, supposing the said Warrant to be lawful, the Justices of Assise thought not good to proceed against him at those Assises, but deferred it till the next Assises: At what time, after this long time of delibera-

Graves case.
Vid. infra pa. 334:
Trin. 44 El. Rot.
1233. in Com.
Banco.
Simile 40 Eliz.
Rot. 422. in Com.
Banco.
The like in the
Kings Bench.
Pasch. 39 Eliz.
Rot. 100. &
Pasch. 41 Eliz.
ibidem Rot. 235.
* Tr. 3 Jac. in
Com. Banco.
Porters case.
4 Mic. 9 & 10 El.
Rot. 1556. Lees
case.

18 El. Dier fo.
Hindes case.

Simpsons case be-
fore the Judges of
Assise in Nor-
thamptonshire,
42 Eliz.

tion, and upon conference it was resolved, that the Statute of 1 Eliz. gave no power to the High Commissioners to make any Warrant to arrest the body of Simpson in that case, but ought to have proceeded by Citation: and therefore that Simpson killing the said Johnson had committed no murder; and so the Jury upon his arraignment found him not guilty of murder according to the direction of the Court, as it appeareth by the Record it self. And it was resolved in Grayes case aforesaid, that for the battery of a Minister they could not fine and imprison.

Supra pag. 133.
Grayes case.

William Thicknes
case, in Communi
Banco.

William Thicknes having the privilege of the Court of Common pleas, had a Habeas Corpus to the Sheriff of London for his body, with the cause, he being under their custody, who returned that the High Commissioners had committed him to their custody by force of his Majesties Commission for causes Ecclesiastical, and of the Statute in that case provided, for that he was convicted before them of Adultery, and other contempts and enormities appertaining to Ecclesiastical consuance. And the case being debated in open Court, he was discharged of his imprisonment, for that by the Statute of 1 El. they could not imprison him.

25 H.8. cap. 19.

By the Statute of 25 H.8. cap. 19. it is enacted, that for lack of Justice at or within any of the Courts of the Archbishops of this Realm, or in any of the Kings Dominions, it shall be lawful to the parties grieved to appeal to the Kings Court of Chancery, and that upon every such appeal Commissions shall be directed under the Great Seal to such persons as shall be named by the Kings Highness, &c. which Commissioners so by the Kings Highness, &c. to be named or appointed, shall have full power and authority to hear and finally determine such Appeal, and that such judgment and sentence as the said Commissioners shall make and decree in and upon such Appeal, shall be good, effectual, and definitive. Which words, albeit they be more general, and with less reference to the precedent matter, then the Act of 1 El. yet have such Commissioners no colour to fine or imprison any: but where the words be [and such judgment and sentence as the said Commissioners shall make and decree] these general words have these words implicite annexed to them [according to the Ecclesiastical Laws] shall be good, effectual, &c. So in the Statute of 1 Eliz. such words are implicite to be added to the said clause, viz. That the High Commissioners shall execute the premises according to the said Letters Patents by the rule of the Ecclesiastical Law or Authority of Parliament. And since the High Commission was inrolled and made publick, many prohibitions have been granted according to Law and Justice upon complaint made by the parties grieved.

And in the Reign of the said late Queen Eliz. it was resolved, that the High Commission should be limited to certain particular enormous and exorbitant causes, which if it were pursued would breed great quiet and repose within the Realm.

See Hil. 17 El.
Rot. 1402. Inter
Henr. Evans Clericum
queren' &
Thomam Jefferies
Clericum Defen-
dent.

a Hil. 3 Jac.
b Mich. 41 & 42
El. Rot. 2919.
and an Attach-
ment thereupon.
Mich. 42 & 43 El.
Rot. 3332.

In the Reign of the said late Queen a Prohibition was granted by Sir James Dier Chief Justice, and the whole Court of Common pleas, 10 Februarii Anno 21 Eliz. to the High Commissioners for that they did hold plea de jure Advocacionis.

a And in my Lord Andersons time in the Reign of Queen Elizabeth the Court of Common pleas granted divers Prohibitions, as it appeareth before, and two of special note b between Baker and Broughton, and another between Blackheath and the Bishop of Gloucester. And in my Lord Gaudies time who succeeded the Lord Anderson, and enjoyed his place but a short time, yet in that time the Court of Common Pleas granted Prohibitions also to the High Commissioners.

Many other Prohibitions have been granted to the High Commissioners out of the Court of Common pleas of after times.

In the Kings Bench there are also many Prohibitions granted to the High Commissioners in the times of the Lord Wray, Lord Popham, Lord Fleming, &c. which are to the same effect as those which have been cited be.

And we will conclude with the confession of the Lord Archbishop Bancroft him-

himself in his 22 Article, his own words being : Of latter days, whereas certain leud persons, (two for examples sake) one for notorious adultery and other intolerable contempts, and another for abusing of a Bishop of this Kingdom by threatening speeches and sundry railing terms, no way to be endured, were thereupon fined and imprisoned by the High Commissioners till they should enter into bonds to perform further orders of the said Court, the one was delivered by *Habeas Corpus* out of the Kings Bench, and the other by a like Writ out of the Common pleas, and sundry other Prohibitions have been likewise awarded to his Majesties said Commissioners upon these suggestions, that they had no authority to fine or imprison any man, &c.

See the Articles and answer in the 2 part of the Institutes, in the Exposition of *Articuli cleri*, &c.

By this Article it appeareth, that befoze the time of the Chief Justice of the Court of Common pleas that now is, and befoze divers of the Judges that now be, were called to be Judges by the judgment and resolution both of the Court of Kings Bench and Common pleas by *Habeas Corpus*, the parties that were fined and imprisoned by the High Commissioners in case of Adultery and scandal of a Bishop, &c. were by the Law discharged, for that the fining and imprisonment of them was unlawful.

And these were the resolutions of the whole Court of Common pleas Pasch. 9 Jacobi Regis, upon often conference and mature deliberation, and accordingly they proceeded.

¶ The Prerogative Court of the Archbishop of Canterbury.

Curia Prærogativa Archiepiscopi Cantuariensis.

This is the Court wherein all Testaments be proved, and all Administrations granted, where the party dying within his Province hath bona notabilia, in some other Diocels then where he dieth, which regularly is to be to the value of 5 l. but in the Diocels of London it is 10 l. by composition.

The Bishops, Lords and Commons assented in full Parliament, that the King, his heirs and successors might lawfully make their Testaments, and that execution shall be done of the same, whereof some doubt was made befoze. See Rot. Par. 1 H. 5. nu. 13. the Testament of King H. 4. and his Executors refused, the Archbishop of Canterbury was to grant Administration with the Testament annexed to the same. See 1 H. 6. nu. 18. the last Will and Executors of H. 5. 10 H. 6. nu. 27.

Rot. Par. 16 R. 2. nu. 10. not in print.

When the King is made an Executor of the last Will and Testament of any other, the King doth appoint certain persons to take the execution of the Will upon them (against whom such as have cause of suit may bring their Action) and appointeth others to take the Account. See Rot. Par. 15 H. 6. Katherine Queen Dowager of England, mother of H. 6. made her last Will and Testament, and thereof constituted King H. 6. her sole Executor. And thereupon the King appointed Robert Rolleston, Clerk, Keeper of the great Wardrobe, John Merston, and Richard Alreed Esquires, to execute the said Will by the oversight of the Cardinal, the Duke of Glouc^r, and the Bishop of Linc^r, or two of them to whom they should account.

Rot. Par. 15 H. 6. nu. 32. Obiit 2 Junii 1436. apud Bermondsey.

The Probate of every Bishops Testament or granting of Administration of his goods, although he hath not goods but within his own jurisdiction, doth belong to the Archbishop.

The like Court the Archbishop of York hath.

From this Court the Appeal is to the King in Chancery. Now touching the jurisdiction of this Court, and the Consistories of Bishops, &c. such points as have been judicially resolved, are necessary to be remembered, both for the safety of the Judge, and the benefit of the party interested.

If a man die intestate having bona notabilia in divers Diocesses, the Judges of this Court hath used to assess a convenient sum to be imployed in pios usus, but with these limitations following: 1. It must be after Administration granted, and the Inventory made and returned, to the end the Estate of the Intestate may be known. 2. The Administrator before any assessment must be called to it, to the intent the Judge may be informed of the true state of the Intestate, and of his children and kindred, for whose succour and relief there is great piety. The 3. the assessment must be in particular, how much, to whom, and to what use. 4. There must a publick Act be made of it before any payment be made. 5. Payment must be made according to the Act. Lastly, the Judge ought not directly or indirectly to take any thing thereof to his own use, nor for the Assessment thereof, or entering the publick Act, and if he doth, it is Extortion.

Mich. 20 Jac. in
Camera Stellata.

And Termino Mich. 20 Jacobi Regis, Sir John Bennet Judge of this Court, for not observing of these rules was sentenced in the Star-chamber for Extortion, and fined at twenty thousand pounds, imprisoned, and disabled ever after to bear an office, as by the sentence appeareth. And the like orders and rules must be observed in all respects (saving the two former) in commutation of penance, which two former do not concern this matter. And these rules as well concerning assessments in pios usus, upon granting of Administrations, as for commutation of penance, may serve for the direction of all the Ordinaries and Judges in Ecclesiastical Courts in England.

21 H. 8. cap. 4.
Mich. 6 Jac. Reg.
Rot. 1301. in
Communi Banco.

There was an Act made Anno 21 H. 8. concerning fees for probate of Last Wills and Testaments, and granting of Administrations. In the case of James Rowse Commissary of the Archdeacon of Huntingdon, in an Information against him by Edmond Neale, for Extortion upon the said Statute of 21 H. 8. wherunto he pleaded not guilty, and was found guilty, the point in question upon the Information was, if the Probate be not written upon the Testament it self, but upon the Transcript ingrossed, whether the taking of a fee by the Defendant for the ingrossing were within the said Statute? And it was upon debate in open Court resolved by the Chief Justice, and the rest of the Justices, Walmsly, Warburton, Foster and Daniel, that such a fee taken for the ingrossing was within the Statute, for that the Act is in the Negative. And if the Executor request any to ingross the Testament, he must agree with him, that he so request (or * being one ready ingrossed with him as he did in the case in question, which is a safe and ready way) but the Ordinary or Commissary ought not to exact a fee for it of the party as a fee due to him, for divers causes. First, for that the words are express for the Probation, &c. or for Registering, Sealing, writing, praising, making of Inventories, &c. which word (writing) extends to this case. Secondly, the words be, or any thing concerning the same Probate, and when the Seal and Probate is put to the Transcript, this concerns the Probate, for the Probate is not put to any other writing. Thirdly, if such a construction should be made, that this case is out of the Statute, this beneficial Law should be illusory and vain; for if the Ordinary or his Commissary might take what he would for the ingrossing by his Clerks as a fee due to him, the Act should be of none effect; and the manner of the precise penning of the Act and the certainty of the fees, and not above, should be all in vain. And the Ordinary, if he will, may annex the Probate to the Testament it self, as seeing he can have no other fee then is in the Statute, it may be hereafter he will do: but for the misreciting of the Act of 21 H. 8. in the Information, Curia advisare vult: and this resolution extending to all Courts of Ecclesiastical Jurisdiction that have Probate of Testaments, we thought it necessary to make a memorial of it.

See the 3 part of
the Inst. Cap.
Extortion.

See the Act.

* Note this.

See the words of
the Act at large.

¶ *The Court of the Arches of the Archbishop of Canterbury.*

This Court is called Curia de Arcubus, and hath been anciently holden in Bow Church of London. For I read of it in a Record of a Prohibition Termino Hil. coram Rege Anno 7 E.1. Rot.8. in Curia Christianitatis coram Decano de Arcubus London, Of Bow Church in London, where the Court hath continually been kept, which and 12 other Parishes in London, whereof Bow is the chief, are within the peculiar jurisdiction in spiritual causes of the Archbishop of Canterbury, and exempt from the Bishop of London.

The Judge of this Court is called the Dean of the Arches, unto whose officialty in spiritual causes to the Archbishop of Canterbury is annexed the peculiar jurisdiction of these 13 Parishes. He hath ordinary jurisdiction in spiritual causes of the first instance, and by Appeal through the whole Province of Canterbury, as it appeareth by the Statute of 24 H.8.cap.12. His power to call any person for any cause out of any part of his Province in the Diocess of any other, unless it be upon appeal, is restrained by the Statute of 21 H.8. cap.9. This Court in the Statute of 25 H.8. cap.19. is called the Court of the Arches or Audience of the Archbishop of Canterbury: and from this Court of the Arches the Appeal is to the King in Chancery by the said Act of 25 H.8.

Hil. 7 E.1. coram Rege Rot.8.
Pasch. 12 E.1. in Banco. Essex. Guilielmus de Mortuomari Clericus, &c.
See Dier 7 Eliz. 241.

24 H.8.cap.12.
1 Eliz. cap.1.
21 H.8.cap.9.
25 H.8.cap.19.

¶ *The Court of Audience. Curia audientie Cantuariensis.*

This Court is kept by the Archbishop in his Palace, and medleth not with any matter between party and party of contentious jurisdiction, but dealeth with matters pro forma, as confirmations of Bishops Elections, Consecrations, and the like, and with matters of voluntary jurisdiction, as the granting of the guardianship of the spiritualities sede vacante of Bishops, admission and institution to Benefices, dispensing with bans of Patrimony, and such like.

¶ *The Court of the Faculties.*

This is also a Court, although it holdeth no plea of controversie (like the Court of Audience next before.) It belongeth to the Archbishop, and his Officer is called Magister ad Facultates. And his power is to grant Dispensations, as to marry, to eat flesh on days prohibited, (and so may every Diocesan) the Son to succeed his Father in his Benefice, one to have two or more Benefices incompatible, &c. It is called Faculties in the Statute of 28 H.8. which in one sense signifieth a dispensation. So as facultates, (in this sense) dispensationes & indulgentia are synonyma.

This authority was raised and given to the Archbishop of Canterbury by the Statute of 25 H.8. cap.21. whereby authority is given to the said Archbishop and his successors to grant Dispensations, Faculties, &c. by himself or his sufficient and substantial * Commissary or Deputy for any such matter, whereof heretofore such dispensations, faculties, &c. then had been accustomed to be had at the See of Rome, or by authority thereof. This Branch of this Act you shall find pleased. Lib.plac' Co. pag. 512, 513.

b Concerning the power of the Archbishop to grant Dispensations to any to eat flesh on Fridays, Saturdays, Emburyng days, Vigils, and Lent, the same is limited by the Statute of 5 Eliz.cap.5. And the penalty of 5 Eliz. in that case is diminished and made less by 35 Eliz.cap.7. Note the Statute of 5 Eliz. concerning eating of flesh on Wednesdays is repealed by 27 Eliz. ca.11. which Act of 27 Eliz. is affirmed by the Act of 35 Eliz. and by 21 Jac.cap.28. and expressly by the Statute of 3 Caroli cap.4.

Vi.28 H.8. ca.16.
21 H.8.cap.13.
5 Eliz.cap.16.

* Commonly called the Master of the Faculties.

4 Trin.44 Eliz. in Com.Banco. Rot. 1525.lib.4.f.117.
Lib.Pl.Co. pag. 512, 513.
62 E.6.cap.19.
5 E.6.cap.3.
See the third part of the Instit. cap. Dier pag.200.
5 Eliz.ca.5.
35 Eliz. cap.7.
27 Eliz.cap.11.
Lib.Pl.Co.371.
27 Eliz.ca.11.
3 Caroli ca.4.
Vid.35 Eliz.c.7.

☛ *Curia Peculiarium.* The Court of Peculiars.

The Archbishop of Canterbury hath a peculiar Jurisdiction in divers Parishes within the City of London and other Diocesses, &c.

☛ *The Consistory Courts of the Archbishops and Bishops.*

See Lit. Sect. 133.
136. 648.

24 H. 4. cap. 12.

Rot. claus. 30 H. 3.
m. 4. mandatum est
Thom. de Stanford
&c.

Ro. Par. 13 E. 1.
m. 21. Rex licent.
dedit Episcop.
Bangor, &c.

* It is said that this
was given by the
Bishops being se-
cular persons Ec-
clesiastical for all
the secular Clergy.

Mutes de Cheins
of *mut cometh*
muta, signifying a
Kennel.

Int. com. de Hil.
2 E. 2. In Scaccar.
Proces. vers.
Episc. de Bath &
Wells.

Mich. 19 E. coram
Rege Rot 157.
Norff. Tr. 21 E. 3.
Rot. 170. coram Rege
21 E. 3. fo. 60.

* 3 R. 2. cap. 3.
7 H. 4. cap. 12.
1 H. 5. cap. 7. Rot.
Parl. 6 H. 4. nu. 48.
4 H. 6. nu. 29.

The Consistory Court of every Archbishop and Bishop of every Diocess in Ecclesiastical causes is holden before his Chancellor in his Cathedral Church, or before his Commissary in places of the Diocess far remote and distant from the Bishops Consistory, so as the Chancellor cannot call them to the Consistory, without great travail and vexation: and he is called Commissarius foraneus. From these the appeal is to the Archbishop of either Province respectively: when Consistories of Archbishops and Bishops began within this Realm, &c. before in the Chapter of the Tourn of the Sheriff.

It appeareth by many Records in the Reigns of H. 3. and E. 1. (as taking some one or two examples for many) that by the Law and Custom of England no Bishop could make his will of his goods or chattels coming of his Bishoprick, &c. without the Kings Licence. The Bishops that they might freely make their Wills, yielded to give to the King after their deceases respectively for ever Sir things. 1. * Their best Horse or Palfrey with hidle and saddle. 2. A Cloak with a Cape. 3. One Cup with a cover. 4. One Bason and Cwer. 5. One Ring of Gold. 6. His Kennel of Hounds. For these a Writ issueth out of the Exchequer after the decease of every Bishop: For example. Rex, &c. Vic' Eborum. Precipimus tibi, quod non omis propter aliquam libertatem, quin etiam ingred' & distring' omnes executores testamenti & ultimæ voluntatis reverendissimi in Christo patris Matthæi nuper Archiepiscopi Eborum defuncti, ac administratores & occupatores bonorum & catallorum quæ fuer' dicti nuper Archiepiscopi, necnon hæred' & tenent' terrarum & tentorum quæ nuper sua fuer' per omnes terras & catalla sua in balliva tua. Ita quod nec ipsi nec aliquis per ipsos ad ea man' apponit donec al' inde tibi præceperimus. Et quod de exitibus earundem terrarum nobis respondend', & quod habeas corpora eorum coram Baronibus de Scaccario nostro apud Westm' a die Paschæ in tres septimanas ad respondend' nobis de uno optimo equo sive palfrido cum cello & fræno. Una chlamyde sive cloca cum capella. Uno capho cum coopertorio. Uno pelve cum lavatorio sive aquar', & uno annulo aureo, nec non * muta canum quæ nuper fuer' ejusdem nuper Archiepiscopi tempore mortis suæ; & quæ ad nos ratione prærogativæ nostræ spectant & pertinent' & de precio sive valore inde, unde nobis nondum est respons'. Et habeas ibi tunc nomina executorum & aliorum prædict' & hoc Breve.

The most ancient of this kind that we find and remember (but certainly there were such Writs before) is inter Memorand' de Scaccario Anno 2 E. 2. the Bishop of Bath and Wells case. Tr. 36 E. 3. ibid. Int' cornia. The Bishop of Chesters case. Hil. 5 E. 4. ibid. adjudge upon demurrer, that the duty being to the King after the decease of every Bishop, it extendeth to an Archbishop, the Archbishop of Yorks case, for every Archbishop is a Bishop. It is sometimes called multa or mulctura de Episcopis, sometime monutier, &c. The King by writ of twelve recovered ten thousand Marks against the Bishop of Norwich for that he prosecuted against the Abbot of S. Edmonds Bury to appear before him against the Kings Prohibition, for which it was adjudged that his temporalties should be seized and his body taken.

* Upon consideration had of the Statutes of 3 R. 2. 7 H. 4. 1 H. 5. & Rot Parl. 6 H. 4. nu. 48. & 4 H. 6. nu. 29. If an Alien or Stranger born be presented to a Benefice, the Bishop ought not to admit him, but may lawfully refuse him: which we have added, for that the Abridgments or late Impressions may deceive you.

☛ The

☞ *The Court of the Archdeacon, or his Commissary.*

This Court is to be holden where and in what places the Archdeacon either by prescription or composition hath jurisdiction in Spiritual causes within his Archdeaconry. And from him the Appeal is to the Diocesan. He is called *Oculus Episcopi*. 24 H.8. cap.12.

In some Acts of Parliament and many Records and Histories you shall read of the Bishops Pall, *Pallium Episcopale*. It is a Hood of white Wool, to be worn as Doctors Hoods be upon the shoulders, with four Crosses woven into it, &c. the form and colours thereof you may see in the Book *De antiquitate Britannicæ Ecclesiæ* pag.1. for a Pall is the Arms belonging to the See of Canterbury, and therefore expressed there and commonly in other places. 20 H.8. c.20, &c.
Vide Cassaneus
4 part. Catalogi
gloriæ mundi fol.
103. a.
26 Consideratio,
ubi legas si placet,
multa de pallio,
Vocabular' juris.

Palla est vestis qua Altare cooperitur, viz. ut lineus pannus consecratus qui super Altare ponitur, super quem extenditur Corporale.

The Clergy petitioned in Parliament that of every Consultation conditional, the Ordinary may of himself take upon him the true understanding thereof, and therein proceed accordingly. Parl. 51 E.3. n.83.

Whereunto the Kings answer was, That the King cannot depart with his right, but to yield to his subjects according to Law. *Nota hoc, & stude bene.*

☞ *The Court of Delegates, and consequently of Appeals.*

It is so vulgarly called, because these Delegates do sit by force of the Kings Commission under the Great Seal upon an Appeal to the King in the Court of Chancery in three causes. First, When a Sentence is given in any Ecclesiastical cause by the Archbishop or his Official. Secondly, When any sentence is given in any Ecclesiastical cause in places exempt. Thirdly, When a sentence is given in the Admiral Court in suits civil and marine by the order of the Civil Law. And these Commissioners are called Delegates, because they are delegated by the Kings Commission for these purposes. 25 H.8. cap.19.

Now because we have generally spoken of Appeals in Ecclesiastical causes, which are grounded upon Acts of Parliament, it shall be pertinent to our purpose to set down the resolution of the Judges, and of the learned in the Ecclesiastical Law, which doth sum up in what causes, from what Courts, and in what time Appeals are to be made, and other necessary incidents concerning the same; as the Lord Dier under his own hand hath reported, but are left out of the print; and yet worthy to be known and published, which you shall hear in his own words and language.

☞ *Of Appeals.*

First, In cases Testamentary, Patrimony and Tithes, from the Archdeacon or his Official, if the matter be there commenced, to the Bishop of the Diocess, and from the Bishop Diocesan or his Commissary in such case, or if the matter be there commenced, within fifteen days after sentence given, to the Archbishop of the Province, and no further. Appeals. Anno
24 H.8. cap.12.

Item, from the Archdeacon or Commissary of the Archbishop, if the matter be there commenced within fifteen days, &c. to the Audience or Arches of the said Archbishop: and from thence within other fifteen days, &c. to the Archbishop himself, and no further. And if the case be commenced before the Archbishop, then to be there definitively determined without further Appeal.

Item, where the matter toucheth the King, the Appeal within fifteen days to

See infra, this is altered by the statute of 25 H.8. in the next pag.

be made to the higher Convocation house of that Province, and no further, but finally to be there determined.

25 H. 8. cap. 19.

A general Prohibition, that no Appeals shall be pursued out of the Realm to Rome, or elsewhere.

¶ Vide supr. pag. precedent.

Item, a general Clause that all manner of Appeals, what matter soever they concern, shall be made in such manner, form and condition within the Realm, as it is above ordered by 24 H. 8. in the three Causes aforesaid; and one further degree in Appeals for all manner of Causes is given, viz. from the Archbishopps Court to the King in his Chancery, where a Commission shall be awarded for the determination of the said Appeal, and from thence no further.

Item, that persons exempt shall likewise pursue their Appeal in the Chancery, ut supra, and not to the Archbishop.

Note, in case where a sentence is given by Commissioners delegates by the Prince, as by the late Visitors, An. 1 Eliz. the party grieved appealing, such appeal is out of the Orders prescribed by the said Statutes, and the Prince in that case may grant a new Commission to others to determine that Appeal. Et ceo fuit fait per l'opinion del plusors des Justices en le case de Goodman deprive del Deanery de Wells.

Nota, Stephen Gardener Evêque de Winton, fuit deprive al Lambeth per Commission del Roy E. 6. fait a 10 persons proceeding sur ceo ex officio mero mixto vel promotio omni appellatione remota summarie de plano, absque omni forma & figura judicii, sola facti veritate inspecta.

This case is in print, Dier fo. 209. a.

Et vide Mich. 3 & 4 Eliz. Coveney President del Novel Colledge in Oxon deprive per le Evêque de Winton, Visitor del dit Colledge, & exempt de tout jurisdiction ordinaire fait appeale al Roy in son Chancery, & Commission illonque grant a A. Browne & Weston Justices, que sur conference ove auters Justices & Civilians, resolve que le appeale ne gist, ne aucun autre remède par le appellant pur ceo que cesti case fuit hors del dit Statute de 24 & 25 H. 8. car cest deprivation est mere temporal, & come per ley prov'. Ex quo sequitur, que une assise gist, &c.

Nota, in appellis per Doctorem Lewes Judic' Admiral' & al' &c. Forasmuch as an Appeal is a natural defence, it cannot be taken away by any Prince or power, and in every case generally when sentence is given, and appeal made to the superior, the Judge that did give the sentence is bound to obey the appeal, and proceed no further until the superior hath examined and determined the cause of appeal. Nevertheless where this clause (appellatione remota) is in the Commission, the Judge that gave sentence is not bound to obey the appeal, but may execute his sentence and proceed further, until the appeal be received by the superior, and an Inhibition be sent unto him; for that clause (appellatione remota) hath three notable effects. The first is, that the jurisdiction of the Judge that gave sentence, is not by the appeal suspended or stopped, for he may proceed, the same notwithstanding. The second, that for proceeding to execution or further process he is not punishable. The third, that those things that are done by the said Judge after such appeal cannot be said void, for they cannot be reversed per viam nullitatis.

* Parliam. at Clarendon 10 H. 2. cap. 8.
Mac. Par. pa. 97.
* Rot. claus. in dorf. anno 8 H. 3. part 1. m. 29.
Rex Dublin Archiepiscopus &c.
Rot. Parl. 18 E. 1.
Rot. 1. William de Valencia. &
Rot. 3. nu. 39.
Wil. de Martingham. acc.
See Hovenden fol. 284.

But if the appeal be just and lawful, the superior Judge ought of right and equity to receive and admit the same, as he ought to do Justice to the subjects. And so if the cause of the appeal be just and lawful, he ought to reverse and revoke all mean Acts done after the said appeal in prejudice of the appellant. Thus far the Report of the Lord Dier truly translated.

* At the Parliament holden at Clarendon called Assisa de Clarendon An. 10 H. 2. cap. 8. the forms of Appeals in causes Ecclesiastical, are set down within the Realm, and none to be made out of the Realm. Ne quis appellat ad Dominum Papam. * Rex agere tulit appell' ad Papam in causa Bastardie, ut contra dignitatem Regis de Consilio igitur (the Record speaking in the person of the King) magnatum & fidelium nobis assistent vobis mandamus, firmiter injungentes quatenus non obstant appellatione premissa non differatis pro eo sententiam, &c. So as the first Article of the Statute of 25 H. 8. concerning the prohibi-

prohibition of Appeals to Rome is declaratory of the ancient Law of the Realm.

* And it is to be observed, that the first attempt of any Appeal to the *Sæ* of Rome out of England was by Anselme Bishop of Canterbury, in the Reign of William Rufus, and yet it took no effect.

* Hayward Doctor of the Civil and Canon Law in the life of William 2. 8 Eliz. cap. 5.

Sæ 8 Eliz. cap. 5. an appeal in Civil and Marine causes before the Lord Admiral, &c. a sentence before Commissioners delegates is final.

Sæ before pag. 125. upon a sentence given by the Constable and Marshal proceeding by the Civil Law in causa Armorum, there lyeth an appeal to the King, but none of the said Statutes extend to this kind of appeal.

Sæ Rot. cl. Anno 30 H. 3. part 2. m. 11. de Appellatione pro Rege fac' in electione Abbatissæ de Shaftesbury.

¶ The Court of the Commissioners of Review, ad Revidendum.

Albeit the said Acts of 24 H. 8. and 25 H. 8. do upon certain appeals make the sentence definitive as to any appeal, for the words be [shall be definitive] and that no further appeal should be had; yet the King after such a definitive sentence, as Supreme Head, may grant a Commission of review, ad revidendum, &c. for 2 causes. 1. For that it is not restrained by the Statute. 2. For that after a definitive sentence the Pope as Supreme head by the Canon Law used to grant a Commission ad revidend: and such authority as the Pope had, claiming as Supreme head, both of right belong to the Crown, and is annexed thereunto by the Statutes of 26 H. 8. ca. 1. and 1 Eliz. cap. 1. And so it was resolved in the Kings Bench Trin. 39 Eliz. where the case was, that sentence being given in an Ecclesiastical cause in the Country, the party grieved appealed according to the said Act of 25 H. 8. to the Archbishop, before whom the first sentence was affirmed. Whereupon according to the Statute of 25 H. 8. he appealed to the Delegates: before whom both the former sentences were repealed and made void by definitive sentence, and thereupon the Queen as Supreme head granted a Commission of Review, ad revidend the sentence of the Delegates. And upon this matter a Prohibition was prayed in the Kings Bench, pretending that the Commission of Review was against Law, for that the sentence before the Delegates was definitive by the Statute of 25 H. 8. But upon mature deliberation and debate the Prohibition was denied, for that the Commission for the causes above said, was resolved to be lawfully granted. In this case I being then the Queens Attorney was of Counsel to maintain the Queens power. And presidents were cited in this Court in Michelots case, Anno 29 Eliz. and in Goodmans case, and Huets case, in 29 Eliz. also. *Sæ* the Statute of 8 Eliz. cap. 5. and observe like words in that Statute, ut supra.

24 H. 8. ubi supra.
25 H. 8. ubi supra.

Trin. 39 Eliz. in the Kings Bench Hollingworths case. Lib. Intr. Raft. fol. 16. Appeal to Rome. Ib. Rome 389.

Upon a sentence given by the High Commissioners, a Commission of Review may be granted to and for the party grieved, as by an express clause within that Commission appeareth. And if no such clause had been therein, yet a Commission of Review might have been granted: Quia sicut fontes communicant aquas fluminibus cumulative, non privative; sic Rex subditis suis jurisdictionem communicat in causis Ecclesiasticis vigore Statuti in hujusmodi casu editi & provisi cumulative, non privative, by construction upon that Act.

The High Commissioners.

Le Court des Conservators des privileges de St. Johns de Jerusalem, &c.

There were two Courts holden coram Conservatoribus privilegiorum, the one Hospitaliorum, and another Templariorum. Of whose jurisdiction, and of their restraint to grant any general Citations priusquam exprimat super qua re

¶ p

fieri

W.2. cap. 43.

feri debeat citatio, & si viderint hujusmodi conservatores quod petatur citatio de aliqua re cujus cognitio spectat ad forum regium, hujusmodi conservatores nec citationes faciant nec cognoscant, as by the Statute of W.2. appeareth.

See the Second part of the Institutes, the Exposition upon that Statute.

The Templers were dissolved in 4 E.2. and the Hospitlers in 32 H. 8. so as these Courts are determined.

24 H. cap. 12.

Now for a conclusion concerning England, I have reserved to say somewhat for the honour, and supream Estate of both the Relatives of our Sovereign Lord the King, and of this his Kingdom, which I conceive to be necessary to that which in this part of the Institutes we have taken in hand, for that it graceth and strengtheneth all the rest.

By the whole Parliament of 24 H.8. wherein, besides the Archbishops and Bishops of the Realm, there were 29 Abbots and Priors Lords of Parliament: It was resolved, and so declared by an Act, That by divers and sundry old antique Histories and Chronicles, it is manifestly declared and expressed, that this Realm of England is an Empire, and so hath been accepted in the world, &c.

Vid. Stat. de 28.
cap. 2. in Hibernia.

But against the truth hereof, opposition hath been made. First, that this is the only Parliament that hath affirmed it. Secondly, that this Declaration is unjust and untrue, and that History or Chronicle doth not affirm the same.

Stat. de 16 R.2.
cap 5. An. domini
1392.

As to the first I answer: that one Act of Parliament is instar omnium, being a proof of the unanswerable and highest nature, but this is not the only; for so much in effect (as to this point) is affirmed by all the Lords Spiritual and Temporal, and the Commons by Authority of Parliament long before the Reign of H.8. that the Crown of England hath been so free at all times, that it hath been in no earthly subjection, but immediately subject to God in all things touching the regality of the same Crown, and to no other.

Rot. Claus. 13 E.2.
m.6.

Publick Notaries made by the Emperour claimed de jure to exercise their offices here in England, but because it was against the dignity of a supream King, they were prohibited by the Kings Writ.

Brañ. who wrote
in the reign of H.3
Lib. 1. ca. 8. nu. 5.
Anno dom 1270.
Int. leges Edovardi
cap. 17.
An. Dom. 1050.

And long before, these by the ancient Law of the Crown of England, were due to the King. Omnis quidem sub rege, & ipse sub nullo, sed tantum sub Deo. (Et ibidem paulo post eodem numero) Ipse autem Rex non debet esse sub homine sed sub Deo, &c.

Anno Dom. 169.

And therewith agreeth the Law before the Conquest. Rex autem, quia Vicarius summi regis est, ad hoc est constitutus, ut regnum terrenum, & populum domini, & super omnia sanctam veneretur Ecclesiam ejus & regat, & ab injuriis defendat, & maleficos ab ea evellat, & destruat & penitus disperdat.

And long before that Anno 169. à passione Christi dominus Elutherius Papa Lucio regi Britanniae scripsit, ad petitionem regis & procerum regni Britanniae. Petitis à nobis leges Romanas & Caesaris vobis transmitti, quibus in regno Britanniae uti voluistis: Leges Romanas & Caesaris semper reprobare possumus, legem Dei nequaquam. Suscepistis enim nuper miseratione divina in regno Britanniae legem & fidem Christi, habetis penes vos in regno utranque paginam, ex illis Dei gratia per consilium regni vestri fume legem, & per illam Dei patientia vestrum reges Britanniae regnum, Vicarius vero Dei estis in regno, &c. and higher I cannot go.

22 E.4. nu. 19.

And by the way it is to be observed in the several grants by Abbots and Priors made to King E.4. they severally stile him by these very words, Supremus Dominus noster E.4. Rex.

25 H.8. ca. 21.

And by three other Acts of Parliament, viz. by the Statute of 25 H.8. cap. 21. wherein by Authority of Parliament it is enacted and declared (directing their Declaration to the King) That this your Graces Realm recognizing no Superiour under God but only your Grace, hath been and is free from subjection to any mans Laws, but only to such as have been devised, made and ordained within this Realm for the wealth of the same, or to such other, as by sufferance of your Grace and your Progenitors, the people of this your Realm have taken at their free

free liberty by their own consent to be used amongst them, and have bound themselves by long use and custom to the observance of the same, not as to the observance of the Laws of any forrain Prince, Potentate, or Prelate, but as to the customs and ancient Laws of this Realm originally established as Laws of the same, by the said sufferance, consents and custom, and none otherwise.

And by the Statutes of 25 H.8. cap. 21. 1 El. cap. 1. and 1 Jac. cap. 1. the Crown of this Kingdom is affirmed to be an Imperial Crown. 25 H.8. cap. 21.
1 El. cap. 1.
1 Jac. cap. 1.
* Pl. Com. 398. b.
Doct. & Stud. fo.
164. cap. 55.

As to the second: I might answer * that Le Court de Parliament est de tres-grand honor & Justice, de que nul home doit imaginer chose dishonorable. And with the Doctor and Student upon the Statute of 45 E.3. cap. That it cannot be thought that a Statute that is made by the Authority of the whole Realm as well of the King, and of the Lords Spiritual and Temporal, as of all the Commons, will recite a thing against the truth.

But to be short, King Edgar stiled and subscribed himself in his Charter, Basileus, Imperator & dominus, which you may read in the Preface to the Fourth part of my Reports. Vide Rot. Pat. 1 E.4. parte 6. m. 23. The like Charter
to the house of
Donnington by
King Edgar.

Edward commonly called St. Edward son of King Edgar in a Charter which he made to the Abby of Ramsey (which I have) stiled himself, Ego Edwardus totius Albionis Dei moderante gubernatione basileus.

Another Charter of King Edwin to the Abby of Crowland intituled, Carta regis Edwini filii regis Edmundi fratris regis Edgari de terris in Jeckelea. Wherein he is stiled Edwinus Anglorum Rex & totius Britannicæ telluris gubernator & rector, and many others.

To conclude this point with a late and learned writer, whom I will cite for that he agreeth with the former Authorities, he saith, that the regal estate and dignity of a King is of two manners. The one is Imperial or Supream, such a one is our Sovereign Lady Elizabeth by the grace of God Queen of England, France and Ireland, which Sovereign Queen holdeth her Empire and Kingdoms with her people and Subjects immediately of the Lord of Heaven and Earth, without any other mean seigniorie or attendancy of corporal or bodily service or allegiance to any other worldly Prince or Potentate, maugre the head of either her forrain enemies or intestine and homeborn traiterous vassals, and also from her sentence (he and we all her faithful and loyal subjects acknowledge to her estate no Superior) lyeth no Appeal. I. F. of the Inner
Temple, in his
book intituled,
The glory of gene-
rosity, p. 140, 141.

There is also a King, and he a Homager or Feudatory to the Estate and Majesty of another King as to his superiour Lord, &c. As that of Navar and Portugal to the King of Castell: the Kingdoms of Granado and Leons to Aragon: the Kingdoms of Lombardy, Sicill, Naples and Bohemia to the sacred Empire: the old Kingdom of Burgundy, and now the late erected title of the King of Arles, to the King of the French men; and so forth of the rest.

The King which is Supream and Imperial is equivalent within his Land to the power and authority that Cæsar can challenge within his own Dominions, and such a King challengeth of right to set upon his head a * Crown Imperial with a Diadem elevated on high, to signify the perfection and greatness of their estate; but to the other Kings homagers a Crown not elevated is due. And that we may (as duty is) both with reverence and dutiful fear discern and judge the office and function of our Sovereign to be most holy and sacred; let us see with what honours a Sovereign King (such a one as is her Majesty) is illustrated and made redoubted to his subjects, first, what great Majesty, honor, power, and glory is intended by setting a Crown upon her head, for in the reverend and majestic Action of Coronation, he is first anointed, then blessed, after that consecrated; to signify to her and unto us that he is of God, that her power is from Christ, and that she is to rule over Christian people: the Crown set on her head is called triumphant, and it is of gold to signify her excellent Majesty; it is called triumphant by reason that the like Crown in fashion and form was given the Emperours and Captains of the Romans in their Triumphs over Kings and Nations. This Crown triumphant is most due to her excellent Majesty even Nota.
* A Crown Imperial.
With what Majesty
crowned.
A Crown triumphant.

by the strict course of Laws of Arms, since that her ancestors have triumphed over many Kings and mighty people, as H. 1. over five Kings of Ireland E. 1. triumphed over the Scottish and Welsh Nations. E. 3. and H. 5. both of them over France. In the triumphant Crown of our Sovereign Lady there be placed (not only for the ornament of her regal Diadem, but also to signify the Princely virtues of a King) twelve Gems or Stones of precious esteem.

And for this Kingdom of England, the other part of the Relative, hear what an ancient Poet hath said.

Bartholomæus.

Anglia gens fortis, & fertilis angulus orbis:
Insula prædices quæ toto vix eget orbe,
Et cujus totus indiget orbis ope.
Anglia plena jocis, gens libera & apta jocari,
Libera gens, cui libera mens, & libera lingua;
Sed lingua melior liberiorque manus.

*The Answer to certain Objections against the Kings Stile of
Defender of the Faith.*

This Bull you may see in Speeds Chronicle, p. 759. nu. 41. Anno domini 1521. 13 H. 8. See Laert. Cherub. Bullar. tom. 1. pag. 619.

35 H. 8. cap. 3.

1 Mar. Dier 94.

And where some do object that the King our Sovereign Lord ought not de jure to enjoy the title and stile of Defender of the Faith, Defensor fidei: for (say they) Pope Leo decimus, Anno Pontificatus sui, by his Bull granted the same to King H. 8. & posteris suis. Well, veritas à quocunque dicitur, à Deo est. But they say that by the Bull of Pope Paul the third, against King H. 8. upon his suppression of the lesser houses of Religion in Anno 27 H. 8. he did not only depose him of this title, but of his Crown also, and gave his Kingdom to him that could get it: which, say we, was done de facto, sed non de jure; and we confess also that by colour of that Bull, Pope Julius the third in his Bull to King Philip and Queen Mary his direction was Charissimis in Christo filiis nostris Philippo regi & Mariæ Reginae illustribus, wherein he omitted the title of Defender of the Faith: but besides the Popes Bull, which (as it seemeth) is countermandable at his pleasure, the King hath a surer right thereunto to this stile, for by the full consent of all the Lords Spiritual and Temporal and the Commons assembled in Parliament, and by Authority of the same, in Anno 35 H. 8. it is enacted, that all his Majesties subjects should from thenceforth accept and take his Majesties stile as it is declared and set forth in manner and form following, that is to say, in the Latine tongue by these words; Henricus octavus Dei gratia Angliæ, Franciæ, & Hiberniæ Rex, fidei defensor, & in terra Ecclesiæ Anglicanæ & Hiberniæ supremum caput: and in the English tongue by these words; Henry the Eighth by the Grace of God King of England, France, and Ireland, Defender of the Faith, and of the Church of England, and also of Ireland, in Earth supream head: and that the said stile should be from thenceforth by authority aforesaid united and annexed for ever to the Imperial Crown of his Highnesse Realm of England. Hereunto it is objected, that this Act of Parliament is repealed by the Act of 1 Mar. but that is mistaken, for as the treasons made and enacted by subsequent clauses of the said Act of 35 H. 8. are repealed by the Act of 1 Mar. but the stile and title of the Crown without question remaineth of force unrepealed; and accordingly Queen Mary in all her several Sessions of Parliament before her marriage and after her marriage, she and King Philip used the stile and title of Defender of the Faith in all their Parliaments, Letters Patents, &c. according to the said Act of 35 H. 8. and by the way she used the title also of Supremum Caput in the second Session of her Parliament in the first year of her reign. And by the resolution of the Judges in anno 1 Mar. it appeareth that the Statutes of 26 H. 8. cap. 1. & 35 H. 8. cap. 3. concerning the stile of the King remains in force, for thereupon did the question depend: so as albeit Pope Julius in his Bull vouchsafed not to give King Ph. & Q. Mary their stile of Defender of the Faith, yet both she before, and both of them after their marriage, according to their right took it upon them notwithstanding the thundring Bull of Pope Paul the third. Lastly, all the Kings and Queens

Queens regnant of England have at their Coronation time out of mind been sworn to defend the faith, and therefore were of common right Defenders of the Faith: by reason of which Oath they may take upon them the stile, and are more firmly bound to perform and do it, then by the Popes Will.

Having spoken of England, and of the petty Islands and Dominions of the same, and intending to speak of that noble Island and Kingdom of Ireland, I could not pass over that ancient and renowned Kingdom of Scotland wholly in silence, but as it were to salute it by the way, and yet to add somewhat, which none that have written of that Kingdom have (to my remembrance) touched.

CAP. LXXV.

Of Scotland.

Concerning this Kingdom there are many things worthy of observation.

1. That these two mighty, famous, and ancient Kingdoms, viz. England and Scotland (I use the words of the Act of Parliament) were anciently but one. 1 Jac. Regis c. 1.

2. That one Religion and service of God is holden and celebrated by both. Vide 4 Jac. c. 10.

3. That as there is one Language in both, so there was one kind of government and one Law in ancient time that ruled both with many unanimous agreements between them, which evidently appeareth by many proofs. First, That the Laws of Scotland are divided as the Laws of England be into the Common Laws, Acts of Parliament, and Customs. Their Common Laws are principally contained in two Books. The first called *Regiam Majestatem*, because it be-
11 Jac. Regis c. 1.
& 2 in Ireland.

ginneth (as Justinians Institutes do) with these words [*Regiam Majestatem*.]
 The second Book is called *Quoniam Attachiamenta*, because it be-
 ginneeth with those two words.

The first Book doth in substance agree with our * *Glanvil*, and most commonly de verbo in verbum, and many times our *Glanvil* is cited therein by special name. * First printed by the perswasion & procurement of Sir Will. Stanford a grave and learned

ned Judge of the Common Pleas *An. Dom.* 1554. 1 & 2 Ph. & Mar. Of whom hear what *Hovenden* saith *Anno Dom.* 1180. (& regni H. 2. 26.) *Henricus Rex Angliæ pater constituit Ranulphum de Glanvilla summum Justiciarium totius Angliæ, cujus sapientia conditæ sunt leges subscriptæ quas Anglicanas vocamus.* This *Hovenden* lived in the Reign of H. 2. and died in the time of King *John*. See Pl. Com. 368. b. per *Catlyn* in Epist. to the eight Book of Reports.

2. The Crown of Scotland is descendible to the Daughter or Heir Female where there is no issue Male. If there be many Daughters or heirs Female, it descends to the eldest. Likewise they have the like descents of lands to Subjects as England hath, as none can inherit in the right Line ascendant. The eldest Daughter hath iniriam partem. All the Daughters of Subjects do inherit.

3. They have the High Court of Parliament, as we in England have, and called by the same name, consisting of the same Members, viz. Lords Spiritual, Lords Temporal, and the Commons. It is summoned and called at the Kings pleasure for a certain time. When they meet, the King or his Chancelor sheweth the causes of calling them together. But there of latter times the Lords Spiritual do chose eight Temporal Lords, and the Lords Temporal chose eight Spiritual Lords. These sixteen make choice of eight chosen for the Counties, and eight of Cities and Burghes, in all thirty two. But whatsoever is agreed upon by them, the King doth allow or disallow by moving of his Scepter, &c. Parliament.

4. They have the same degrees of Nobility, as Dukes, Marqueses, Earls, Viscounts, Barons, &c.

5. They have the same great Officers, as Chancelor, that keepeth the Great Seal, Lord Treasurer, Lord Privy Seal, Secretary, &c. 6. And

6. And the same Ministers of Justice, as Sheriffs, Coroners, &c.
7. The same Laws for the most part quarto modo appropriated to England, viz. Tenant by the curtesie, because they had the same Law that England had.
8. The like Writs, Brevia, as de Recto, Assise of Novel Disseisin, Mordanc', De gard', De Ideof inquirend', De divisio fac', Replegiar', Attachm', &c.
9. They agree with Magna Carta concerning Wardships, &c.
10. With Carta de foresta c. 11. for it is lawful for Bishops, Carls, and Barons coming or returning through the Kings Forests at the Kings command to kill one or two Beasts in the sight of the Forrester, or otherwise in his absence to blow his Horn, that he appear not to take it thievishly.
11. The Lord of whom the land is holden by Knights service per antiquis feoffamentum shall have the wardship of the body.
12. The Sheriffs should cause the Acts of Parliament to be proclaimed, &c. All which, and many more are the ancient Laws of both Kingdoms, as it appeareth in the said Books of Regiam Majestatem, & quoniam attachiamenta, &c.
13. The Sheriffs there have an inheritance in their Office, as sometime in England they had, and yet in Cumberland they have.
14. The same Vocables of art are used in the Laws of both Kingdoms, as Ordellium, i. the Court of Water and Iron, Filius mulieratus, Marchetum, Serplaith, or Sorpler, Judicamenta, &c. Machameum or Mahemium, Murdrum or Murcharum, Chancemeley, Mote, Misericordia, Messuagium, Flightwight, Medletum, Remanere, Manerium, Recognitio per Assisam, Pipowdres, Pannagium, Ora, Nonclayme, Soc, or Sok, Serjanteria, grand Serjeanty, petty Serjeanty, Sectator, a Suiter, Sheriffs of inheritance there, the Sheriffs Court or County Court, Toll, Tunbrellum or Tumbrellum, Thainus, Soccage, Burgage, Servitium militare, Relief or Relieve, Them and Teme, Theftbote, In libera Eleemosyna, Terræ Dominicales, Liberum tenementum, Vidiare duellum, Warrenna, or Varenna, Valvafores or Vavafores, Waif, Stray, Castleward, Veredigum, Viridarii, Infangthief, Outfangthief, Outlawry, Outlawed, Justice in Cir, Wreck of the Sea, Woucher, Vicenatum, Hamsockne, Hida terræ, Bovata terræ, Heriot or Heregeld, Hutefium or Huefium, Regraters, Forestallers, a Guilde, falsifying of ooms or recovery, Quarentena, Felonia, Feodum, Homage, Fealty, Estoverium, esonium, enitia pars, Disparagement, Disseisins, Disclaimer, Scaccarium, Collustrigium, Champertie, Maereminum, Averia, Catalla, Wote, Bloodwite, Grand Assise, Assise of novel disseisin, Waretors, Affidavit, Adjournment, Responsals, Attornies, and many others.

There was an Heptarchy in Scotland but now a Monarchy. There are there two Archbishops, the one of S. Andrew, the other of Glasco: S. Andrew hath eight Bishops under him, and Glasco three.

There are there thirty Counties or Sherifdoms.

The ancient Motto of the King of England is, God and my right (*intelligitur*) shall me defend. Of the King of Scotland, In my defence God me defend.

There are also two famous Universities, one in S. Andrews, the other in Glasco.

The length of Scotland from Twede to the uttermost Coast is 480 Miles: it is longer then England, but narrower, and endeth like a Wedge.

Of ancient time all the Bishops of Scotland were sacred, and confirmed by the Archbishop of York.

But by reason of their Acts of Parliament, which in many points have altered, diminished, and abrogated many of the old, and made new Laws and other proceedings: the distinct Kingdoms as they now stand have many different Laws.

Item, It is ordained by the King by consent and deliverance of the three Estates, that all and singular the Kings Lieges of the Realm live and be governed under the Kings Laws and Statutes of the Realm allanerly: and under na particular Laws, nor special priviledge, nor be na Laws of uther Countries nor Realms.

Item,

Item, It is Statute and ordained, That all our Sovereign Lordis Lieges beand under his obeisance, and in special the Isles be ruled by our Sovereign Lordis awn Laws, and the Common Laws of the Realm, and be nane uther Laws.

Parl. Jac.4. c.79.
11 Martii Anno
Dom. 1503.

King James at his Parliament holden An.1. of his reign, endeaboured to have made an union of both Kingdoms, and to have erected a new Kingdom of Great Britain. And thereupon authority was given to certain Commissioners of the higher and lower House of Parliament, to treat with certain Commissioners of Scotland for and concerning an union of both Kingdoms. Amongst these Commissioners there grew a question, whether there could be made an union of the Kingdoms by raising a new Kingdom of Great Britain, before there was an union of the Laws. Which question by the Kings commandment was referred to all the Judges of England in Trinity Term, An. 2 Jac. who unanimously resolved (I being then Attorney general, and present) That Anglia had Laws, and Scotia had Laws, but this new created Kingdom of Britannia should have no Law. And therefore where all the judicial proceedings in England are secundum legem & consuetudinem Angliæ, it could not be altered secundum legem & consuetudinem Britannia, until there was an union of the Laws of both Kingdoms, which could not be done but by * Authority of Parliament in either Kingdom.

1 Jac. cap. 2.

An. 3 Jac. cap.3. An Act made for things to be done by force of the said Act of 1 Jac. cap.2. in any other Session of Parliament.

Anno 4 Jac. cap.1. A repeal of hostile Laws and of hostility between England and Scotland, &c. And it is enacted, that no Englishmen shall be sent out of England into Scotland for any offence done in Scotland, until such time as both Realms shall be made one in Laws and government. So as the resolution of the Judges was approved by Parliament. See a Proclamation 20 Octob. 2. Jac. concerning the Kings stile of King of Great Britain, wherein all judicial and legal proceedings, &c. are excepted.

Vid. supra. p.36.
* Ex instrumento
Lib. Hosp. Sancti
Leonardi in Com.
Eborum. Egbert
Rex in Parliamen-
to apud Winton-
iam mutavit no-
men Regni de
consensu populi
sui, & jussit illud
de cætero vocari
Angliam. Iste Rex
Egbertus obiit
Anno Dom. 673.
See a Proclamati-
on 15 Septemb.
1603. 2 Jac.

I never read of any union of divided Kingdoms, and therefore I conceive it to be without president. And in this union many things would fall into consideration, and those of great weight, other then the union of Laws, though that be a main one: As for example, the several Crowns are descendible to several heirs of * blood. And question may be made who should be heir of this new Kingdom.

* H.7.

But the learned Poet hath found out an union without danger, directing his verses to King James.

Cum triplici fulvum conjunge Leone Leonem,
Ut varias Atavus junxerat ante Rosas.
Majus opus, varios sine cæde unire Leones,
Sanguine quam varias confociaſſe Rosas.

Whoſoever is desirous to know such Miscellanea as we have observed concerning Scotland, let him read these Records and Authorities following.

The Records of Parliament from the beginning thereof, for the receivers and triers of Petitions in the Lords house, Rot. liberat. anno 3 Ed.1. m. 2. per Johannem Lovetot, Rot. paten' anno 20 Edw. 1. Gilberto Comiti Glovornia & Hereford. Scotia. Rot. Parliament. 21 Edw. 1. inter placita. Rot. 1 & 2 Hovenden 1194. pag.7. carta Regis R.1. Mat. Westm. Anno Dom. 1260. pag. 302. H.3. Rot. Scotia 21 E.1. Carta F. 1. & Iſa Alexandri Regis Scotia. Rot. Valconia 25 E. 1. m.2.3. in dorf. Trin. 25 E.1. coram Rege Rot.6. Norff. Rafe de Tonyes caſe. An. 29 E.1. Iſa quas Rex per ſe & quas Comites & Barones Angliæ per ſe miſerunt Domino Papæ anno 29 E.1. autoritate Parliamenti, quæ irrotulata ſunt etiam in Scaccario. Vid. Wallingham 48 & 49.

Rot. Parl. apud
Linc. 29 E. 1.
Anno Dom. 1300.
Litera omnium
Nobilium Angliæ,
&c. Papæ.

Rot. pat. 24 E.1. Episcopis Scotia. Mich. 33 E. 1. coram Rege Rot. 127. Scotia,

tia, Rot. Parl. 35 E.1. in brevi de Parlamento, & auter 1 E.2. 1 E.3. f.17. Grayes case. 6 E.3.18. The Abbot of Crowlands case. 9 E.3.6. John Darcyes case. Rot. pat. 10 E.3. 2. ps. Comes Arundel. Rot. Parl. 14 E.3. nu.15. stat. 4. Rot. Claus. 22 E.3. & 23 E.3. breve de Parlamento magnifico Principi, &c. 22 Aff. p. 85. 39 E.3. fol. 35. Rot. Parliament. 42 E.3. nu. 7. 42 E.3. fol. 25. 8 R.2. tit. Cont. clayme. pl. ultimo. 13 H. 4. fol.5. Rot. pat. 2 H.5. part. 3. m. 1. 8 H. 5. fol. 5. 32 H.6.25. 20 E.4.6. b. Litt. sect. 100. & 165. 1 part of the Institutes. Stat. de 2 & 3 E.6. cap.36. Fortescue cap. 13. Pl. com. 126. Dier manuscript 3 Eliz. 22. b. & 13 Eliz. fol. 68. m. 5. Dier 12 Eliz. fol. 287. in print. Lib. 7. fol. 22,23. &c. Calvins case. Lib. 9. fol. 114. Signior Zanchers case. *See before in the Chapter of the High Court of Parliament.*

Historiz.

Polydor. Virgil.

Hollinsh. 1 part. fol. 116,117. 2 part.286. Stowe 303.

Matth. Westm. 428,425. 443,444,445. Walsingham 17.28.32.129, &c.

Thus have you all which we have observed in our reading concerning this matter, and which the benevolent Reader may peruse at his pleasure; to whose censure we wholly refer the same. Multi multa, nemo omnia novit.

You have observed, that those of Scotland do agree with us in language, and as hath been said, differ in Laws. On the other side, the Subjects of Ireland differ from us in Language, and agree with us in Laws, and therefore of them we shall speak somewhat the more at large.

Bede in History of England, lib. 1. c. 1.

* Redshanks.

Amongst variety of Authors from whence this noble Nation of the Scots originally came, we follow Venerable Bede in his History of England, l. i. c. 1. and also from whence the * Picts originally came. And there you shall read, that the Picts arriving in Britania planted themselves in the north parts thereof, for the Britains had taken up the South part before. And whereas the Picts having no wives did require the Scots to marry their daughters, the Scots agreed to grant them their boon, under condition, that as often as the matter was in doubt, they should choose their King rather of the next of the house of the woman than of the man.

Cap. 13.

And that Palladius in the eighth year of Honorius the Emperour, Anno Domini 411. was sent by Celestinus Bishop of Rome to the Scots that had received the faith of Christ, to be their first Bishop.

* Et lib. 2. cap. 4.

Beda in his History of England, l. 1. cap. 11. Vid. sup. p. 157.

* That the Scots do nothing differ from the Britains in their conversation.

Both these famous Kingdoms have found by woful experience, that unwise and uncertain making of leagues, greatly indamageth the Commonwealth, and the fatal danger of such leagues to the Princes themselves.

CAP. LXXVI.

Of the Kingdom of Ireland.

W^e shall not need to undertake another work to write of the Courts of Justice there, for that they have the same which we have in England, and the same Law, saving, where some that have written of them have in some main points mistaken the matter; we will convince the same by direct matter of Record, and we intend to add some things which are necessary to be known; which no man that hath written of that Country hath vouched, or if they have remembred the same, it is with so light a touch, as much is omitted out of the Record, or case resolved it self, worthy to be known, which we intend to supply for the honour of the King, and benefit of his subjects there. And the rather, for that I have been informed by many of them that have had judicial places there, and partly of mine own knowledge, that there is no Passion in the Christian world that are greater lovers of Justice (whereof we shall principally treat) then they are, which virtue must of necessity be accompanied with many others; and besides they are descended of the ancient Britains, and therefore the more endeared unto us.

First, concerning the Parliament of Ireland, being the highest Court there, where some have supposed that the same began in 17 E. 3. we shall make it appear by matter of Record, that then not only King John, as all men agree, but H. 2. also the Father of King John, as * before it hath appeared, and in the next page shall be touched, did ordain and command at the instance of the Irish, that such Laws as he had in England should be of force and observed in Ireland: hereby Ireland being of it self a distinct Dominion, and no part of the Kingdom of England (as it directly appeareth by many Authorities in Calvins case) was to have Parliaments holden there as England; and thereupon in the Reign of King John himself a Parliament was holden there, as by this Record ensuing appeareth.

Rex Comitibus, Baronibus, Militibus, & liberis hominibus, & omnibus aliis de terra Hibernie, Salutem. Quia manifeste esse dignoscitur contra Coronam, & dignitatem nostram, & consuetudines, & leges regni nostri Anglie, quas bone memorie Dominus Johannes Rex, pater noster, de a communi bonum de Hibernia consensu teneri statuit in terra illa, quod placita non teneantur in Curia Christianitatis de Advocationibus Ecclesiarum & Capellarum, vel de laico feodo, vel de catallis que non sunt de testamento vel matrimonio. Vobis mandamus, prohibentes quatenus hujusmodi placita in Curia Christianitatis nullatenus sequi presumatis in manifestum dignitatis & Coronae nostrae prejudicium, scituri pro certo, quod si feceritis, dedimus in mandato Justiciario nostro Hibernie, Statuta Curie nostrae in Anglia contra transgressionem hujus mandati nostri cum iustitia procedat, & quod nostrum est exequatur. In cuius, &c. Teste Rege apud Winchcomb 28 die Octobris, Anno Regni nostri decimo octavo. Et mandatum est Justiciario Hibernie per literas clausas, quod predictas literas patentes publice legi & teneri faciat.

But as true it is that the Father of King John, viz. H. 2. when he had conquered Ireland, sent that Treatise, intituled *Modus tenendi Parliamentum*, in a fair Parchment Roll, for their better holding of Parliaments there, which you may read more at large before Cap. The High Court of Parliament, p. 12.

1 Jacobi cap. 1. &
11 Jac. & c. cap. 1.
& 6. in Ireland.
Vid. the 1 part of
the Institutes,
Sect. 212.

Parliaments in
Ireland of ancient
time.

* Pag. 12.

Rot. Ann. 18 H. 3.
m. 17. nu. 21.

See the first part
of the Institutes
Sect. 212.

a Nota, Rex de
communi omnium
consensu (ac com-
muni consilio te-
neri statuit) is by
Act of Parliament.

b Nota [omnium]
that all received
the Laws, &c.
Many things in
these Letters Pa-
tents are worthy
of observation.

Rex Henricus 3. Anno regni sui 12. mandavit Justiciario suo Hiberniæ, ut convocatis Archiepiscopis, Episcopis, Baronibus & Militibus ibidem coram eis legi faciat Cartam Regis Johannis; quam legi fecit, & jurari a Magnatibus Hiberniæ de legibus & consuetudinibus Angliæ observandis, & quod leges illas teneant & observent.

Rot. Pat. 30 H. 3.

* Nota.

Coram Rege
Mich. 33 E. 1.
Rot. 124. Hi-
berniæ.

Quia pro communi utilitate terræ Hiberniæ, & pro unitate terrarum, provisum est, quod omnes leges & consuetudines quæ in regno Angliæ tenentur in Hibernia teneantur, & eadem terra eisdem legibus subjaceat, ac per easdem regatur, sicut Johannes Rex cum illic esset * statuit, & firmiter mandavit. Ideo volumus quod omnia Brevia de Communi Jure quæ currunt in Anglia similiter currant in Hibernia sub novo Sigillo Regis. Teste, &c. apud Woodstock.

Major Dublin, qui querebatur vers. Thesaurarius Scaccarii Dublin, & vers. Barones Scaccarii de gravaminibus per ipsos illatis, remittitur Parlamento, & inde huc: cui per Curiam dictum est, quod gravamina sua proponat, qui dicit quod non adhuc est consultus, super quo dies datus est. Ad quem diem nullas proposuit querelas, Ideo committitur Turri London, & finem fecit Domino Regi.

Sometimes the King of England called his Nobles of Ireland to come to his Parliament of England, &c. And by special words the Parliament of England may bind the subjects of Ireland, as taking one example for many.

Rot. Parl. 8 E. 2.
m. 31.

10 Octobris Rex affectans pacificum statum terræ Hiberniæ, mandavit Ricardo de Burgo Com. Ulton & aliis Nobilibus terræ prædictæ, quod sint ad Parlamentum suum quod summoneri fecit apud Westm in Octabis Sancti Hillarii prox. ad tractand. ibid. cum Proceribus, &c. regni sui super statu terræ prædictæ.

An excellent president to be followed, whensoever any Act of Parliament shall be made in England, concerning the Statute of Ireland, &c.

Rot. Parl. 35 E. 3.
irrot. sic.

Anno 35 E. 3. De Consilio summonit' pro ter' habentibus in Hibernia, Maria Comitissa Norf.

Ælianora Comitissa Ormond.

Jana la despencer,

Philippa Com. de la Marche,

Johanna Fitzwater,

Agnes Comitissa Penbroke,

Margareta de Roos,

Matildis Comitissa Oxoniæ,

Catherina Comitissa Athol.

ad mittendum fide dignos ad colloquium.

a Rot. Parl. anno
10 E. 2.

Rot. claus. 10 E. 2.

m. 38. & Rot.

claus. 12 E. 2. m. 3.

Annales Hiberniæ

Anno Dom. 1309.

2 E. 2. Parliam. tent.

apud Kilkennie per

Com. Ulton. & Jo-

hannem Wagan.

Just. c. Hiberniæ &

Magnates, &c.

b Rot. Parl. 17 E. 2.

1 part. Pat. anno

prædict. m. 3.

c Int. Ordinationes

pro statu Hiberniæ

anno 17 E. 3. in

Turri, &c.

a De Parliamentis singulis annis in Hibernia tenendis, & de legibus & consuetudinibus ibidem entendandis.

Hereby it appeareth that there were Parliaments holden in Ireland befoze this time, and order taken at this Parliament that they should be holden every year, and the like Acts were made in England in 4 E. 3. & 36 E. 3. for Parliaments to be holden in England.

b In Octabis Sancti Martini apud Nottingham Rex de consensu communis Consilii sui fecit certas ordinationes pro reformatione status sui Hiberniæ, & ministrorum Regis ibidem.

c Volumus & præcipimus quod nostra & terræ nostræ negotia, præsertim majora & ardua, per peritos Consiliarios, ac Prælatos, & Magnates, & quosdam de discretioribus hominibus in Parliamentis tractentur, discuti-
antur & terminentur.

This

This Ordinance doth regulate the Parliaments in Ireland according to the institution and end of the Parliaments in England, as in the Writ of Parliament, which is to confer and treat De arduis & urgentibus negotiis nos (i. Regem) & statum & defensionem regni & Ecclesie Anglicane concernentibus; the effect whereof is contained in the Ordinance of 17 E. 3. but that Ordinance doth not erect any Parliament there, as some have (without any colour) supposed.

See 20 H. 6. fo. 8. which began Mic. 18 H. 6. Rot. 46. coram Rege, & 2 R. 3. fo. 12. See before in the Chapter of the High Court of Parliament.

And seeing good and profitable Acts of Parliament made in the Realm of England since the Reign of King John extended not into Ireland, unless it were specially named or by general words included, * as within any of the Kings Dominions, a right profitable Act was made at a Parliament holden in Ireland in Anno 10 H. 7. before Sir Edward Poynings then Deputy or Prorex in Ireland, and thereupon called Poynings Law.

Vid. Lib. Album in Scaccario. Divers Acts here made concerning Ireland, and transmitted thither to be enrolled in the Chancery there. * 25 H. 8. cap. 12. F. N. B. 178. a. 12 R. 3. 12. Anno 10 H. 7. Poynings Law.

Whereby it is enacted, that * all Statutes late made within the Realm of England concerning or belonging to the common or publick weale of the same, from henceforth be deemed good and effectual in the Law, and over that be accepted, used and executed within this Land of Ireland, in all points at all times requisite according to the tenor and effect of the same. And over that by the authority aforesaid, that they and every of them be authorised, proved, and confirmed in this same Realm of Ireland. And if any Statute or Statutes have been made within the said Land heretofore to the contrary, that they and every of them by the authority aforesaid be adnulled, revoked, and made void, and of none effect in the Law.

* Nota.

And Hil. 10 Jacobi Regis, it was resolved by the two Chief Justices and Chief Baron, that this word [late] in the beginning of this Act had the sense of [before] so that this Act extended to Magna Carta, and to all Acts of Parliament made in England before this Act of 10 H. 7. But it is to be observed that such Acts of Parliament as have been made in England since 10 H. 7. wherein Ireland is not particularly named or generally included, extend not thereunto, for that albeit it be governed by the same Law, yet is it a distinct Realm or Kingdom, and (as hath been said) hath Parliaments there.

Vide Bracton lib. 5. fo. 395. b. Temps E. 1. Voucher 239. 14 H. 3. Stat. de Homage. 13 E. 2. Bastardy 25. 7 E. 3. 9. 8 Aff. 17. Britton fo. 1. a. 45 E. 3. 19. Trin. 29 E. 1. coram Rege. 10 E. 3. 41. 42. 11 H. 4. 7. 8 R. 2. Proces 224. 3 H. 7. 10. 7 E. 4. 27. Pl. Com. 368. 13 Eliz. Dier 303. 20 Eliz. Dier 360. Lib 7. Calvins case. 1 part of the Institutes Sect. 95.

Books concerning Ireland.

How and in what manner a Parliament is to be holden in Ireland, and how Bills ought to pass in the same.

The Lords of the Council directed their Letters to the two Chief Justices and Chief Baron in these words.

After our hearty commendations to your Lordships. Whereas his Majesty for divers weighty considerations hath resolved to hold a Parliament in the Realm of Ireland, and that by an Act made in the tenth year of H. 7. called *Poynings Act*, it is provided that all such Bills as shall be offered to the Parliament there shall be first transmitted hither under the Great Seal of that Kingdom; and having received allowance and approbation here, shall be put under the Great Seal of this Kingdom, and so returned thither to be preferred to the Parliament: forasmuch as there are accordingly transmitted hither from thence di-

Parliaments in Ireland holden at this day. Hil. 10 Jacobi Regis.

vers Bills as well publick as private, some of which Bills were first agreed on here, some others were framed and conceived there, and coming now hither may happily receive amendment or alteration: we have thought meet for avoidance of any question or inconvenience that may arise of the manner and form of proceeding in amending or altering of these Bills, hereby to pray and require you, calling to you his Majesties Attorney and Solicitor to look into *Poynings Act*, and to consider of some such course as shall be fit to be held concerning the same, &c.

Dated *Ultimo Januarii* 1612.

3 & 4 Ph. & Mar.
cap.4.

Whereupon in this Term the said Chief Justices and Chief Baron, and the Attorney and Solicitor were assembled two several days at Serjeants Inn, and had consideration not only of the said Act of 10 H.7. cap.4. but of the Act of 3 & 4 Ph. & Mar. cap. 4. Intituled, An Act declaring how *Poynings Act* shall be expounded and taken.

For by the said Act of 10 H. 7. it is provided that no Parliament be hereafter holden in the said Land of Ireland, but at such season as the Kings Lieutenant and Council there first do certifie the King under the Great Seal of that Land, the causes and considerations, and all such Acts as them seemeth should pass in the same Parliament, and such causes, considerations, and Acts affirmed by the King and his Council to be good and expedient for that Land, and his License thereupon, as well in affirmation of the said Causes and Acts, as to summon the said Parliament under his Great Seal of England had and obtained. That done, a Parliament to be had and holden after the form and effect afore rehearsed. And if any Parliament be holden in that Land contrary to the form and provision aforesaid, it be deemed void, and of none effect in Law.

Sur quel Act divers doubts & ambiguities fuer' conceive & ascuns de eux fuer' de greinder difficulty que auters.

1. Et primerment un doubt fuit conceive le quel le dit Act de 10 H. 7. extend al successors le Roy H.7. intant quel Act parle solement del Roy generalment & ne' de ses successors. 2 Si le Roigne Marie fuit deins cest parol Roy. Et coment que ceux ne fuer' matters d'ascun ambiguity, car cest parol Roy que import son politique capacity ne unques mort, & esteant parle indefinite extendin ley a tous les successors, uncore ceo est issint expound per le dit Act de 3 & 4 Ph. & Mar. Et que le dit Act de 10 H. 7. extendra to the King and Queens Majesty, her Heirs and Successors.

2. Ou le Act de *Poynings* dit (the Kings Lieutenant and Council there) scruple fuit conceive, si le Roy appoint un per nosme le Deputie, ou Lord Justice, ou sil constitute 2 Lords Justices, chief Governours or Governour, & le Council, &c. Et quant a ceux est explaine per le Act de 3 & 4 Ph. & Mar. que le dit Act de *Poynings* extendra a tout ceux.

3. Le greinder & plus difficult doubt fuit sur ceux parols in la^t de *Poynings*. And such causes, considerations, and Acts affirmed by the King and his Council to be good and expedient for that Land, &c. Le quel le Roy poet fair ascun change ou alteration des causes, considerations ou Acts que serr' transmitti icy del Lieutenant & Council d'Ireland, car ceo nest pas affirmation mes correction & alteration de eux. Et pur ceo fuit necessary destre explaine, que La^t de 3 & 4 Ph. & Mar. fait in ceux parols. Eith

ther for the passing of the said Act, &c. in such form and tenor as they should be sent into England, or else for the change and alteration of them, or any part of the same.

4. *Auter question fuit sur les parols del primer Act, sc. That done a Parliament to be had and holden, &c. si a mesme le Parliament auters Acts que fuer' affirme ou alter icy poent estre enaëtes per authority del Parliament la. Le quel est explique per le dit darrein Act in ceux parols, for passing and agreeing upon such Acts, and no others, as shall be so returned under the Great Seal of England.*

5. *Grand doubt fuit conceive sur les ditz parols (that done a Parliament to be holden) le quel le Lieutenant & Conncell d' Ireland apres le Parliament commence la, & pendente Parlamento poient sur debate & conference la, transmit ascun auters considerations, causes, tenors, provisions, & ordinances come semblent a eux bone destre enaë' a mesme le Parliament deins le Realme d' Ireland, le quel est explique per le dit Act de 3 & 4 Ph. & Mar. in expresse parols, que ils poient, &c.*

Nota Lecteur lorder del proceeding & sommons del Parliament in Ireland. Primerment le Lieutenant & Conncel la doivent certefier desouth le Grand Seale d' Ireland le causes & considerations de toutz tielz Acts come semble a eux bone a passer en Parliament, issint que le original covient a commencer la. 2 Ils covient destre affirme ou alter & change & retourne desouth le Grand Seal Danglitterre. 3 License desouth le Grand Seal a sumoner & tener un Parliament. 4 Atransmitter Billes pendente Parlamento come appiert devant. Et fuit auxi resolve una voce. 1. Que les causes, considerations, & Billes transmitt icuy desouth le Grand Seale d' Ireland doivent destre custodie & preserve icuy in le Chancery d' Anglitterre, & ne remaunde. 2. Silz soient affirme, ilz doivent destre transcript desouth le Grand Seale & retourne in Ireland, & tout ceo que passe le Grand Seale doiet destre inrolle icuy in le Chancerye. 3. Si les Acts transmitt icuy soient in ascun part alter ou change icuy, laëts issint alter & change doivent come en un continent destre retourne desouth le Grand Seale Danglitterre a ceux in Ireland, tout quel doit destre inrolle icuy in le Chancorye Danglitterre. Mes le transcript desouth le seale d' Ireland que le remaine in le Chancerye icuy, ne ser' amend, mes l' amendment serra desouth le Grand Seale Danglitterre come est avandit. 4. Les amendments ou alterations icuy ferr' come est avandit retourne in Ireland sans ascun signification ou certificat dallowance de ceux per ceux de Ireland, car sicome les Acts movent originalment de Ireland, issint les amendments ou alterations movent icuy in Anglitterre. 5. Touts les Bills que sont transmitt icuy de Ireland sont ove le petition del Deputy & Conncel le Roy touts ensemble desouth un Grand Seale d' Ireland. 6. Touts les Bills que sont affirme ou alter icuy soient retourne ensemble desouth un Grand Seale Danglitterre.

And thus much concerning the Parliaments of Ireland.

The case of the Earl of Shrewsbury upon the Statute of 28 H. 8.
of Absentees.

28 Martii Anno
Dom. 1612.

Per force de certain Letters Patents de 28 Mar. 1612. del Seigniors del Privy Councel direct al Sir Humf. Winche, Sir Jam. Lea, Sir Anthony Sentleger, & Jam. Fullerton, ilz certifient aux seigniors le claim de Guilh. Countee de Salop aux dignities del Countee de Waterford & Barony de Dongarvan in Ireland come ensuiſt. Le Roy H. 6. per ſes Letters Patents An. 24. de ſon reign granta a ſon treschier coſin John Countee de Shrewsbury in conſideration de ſes approved & foyall ſervices in le City & County de Waterford in Ireland, pro eo quoque quod per eundem conſanguineum noſtrum prædicta terra noſtra Hibernia in partibus illis contra huiusmodi inimicorum & rebellium noſtrorum inſultus potentius defenderetur, ipſum in Comitem Waterford una cum ſtilo & titulo ac nomine & honore eidem debitis ordinamus, præficimus & creamus Habendum, al dit Countee, & a les heirs males de ſon corps. Et ouſtre per meſme les Letters Patents granta les Castles, ſeigniories, honors, terres & barony de Dungarvan al dit John Countee & a les heirs males de ſon corps, les premiſſes deſtre tenus del Roy & ſes heirs per homage & fealty, & le ſervice deſtre ſeneſchal a ſon Maieſty in le Realm d' Ireland. Puis al Parliament (communement appelle des Absentees) tenus al Dublyn in Ireland, 1 Maii, An. 28 H. 8. fuit enact (per reaſon del long abſence del George Countee de Salop hors de meſme le Realm) que le Roy, ſes heirs & assignes avera & enjoyera in droit de ſon Corone de Anglitterre tous honors, manors, Castles, ſeigniories, franchiſes, hundreds, liberties, County Palatines, Jurisdicions, annuities, fees des Chivaler, terres, tenements, &c. & tous & ſingular poſſeſſions, hereditaments, & tous auters profits, cibien Spiritual come Temporal, quecunque queux le dit George Countee de Shrewsbury, & Waterford, ou aſcun anter perſon ou perſons a ſon uſe avoient, &c. Le Roy H. 8. per ſes Letters Patents, An. 29 de ſon reign recitant le dit ſtatute de Absentees. Nos præmiſſa conſiderantes & nolentes ſtatim, honorem, & dignitatem prædicti Comititis diminuire, ſed amplius augere, ex certa ſcientia, & mero motu, &c. Granta al dit Countee & ſes heirs le Abby de Ruſſford ove les terres a ceo pertynant in le County de Nottingham, & le ſeigniorie de Rotheram in le County de York, les Abbeys de Cheſterfield, Shirebroke & Gloſſopdale in le County de Derby ove divers auters terres & tenements de grand value deſtre tenus in Capite, & le queſtions fuer'.

1. Le quel per le longe abſence del Countee de Salop hors de Ireland per que les Roys & ſubjects wanted leur defence & aſſiſtance la, enconter le expreſſe conſideration del creation, le title del honor eſt perdue ou forfeit, le dit Countee eſteant Pier del ambideux Realms, & reſiding icy.

2. Le quel per le dit ſtatute des Absentees, An. 28 H. 8. le title del dignity del Countee de Waterford ſoit priſe del dit Countee de Shrewsbury cibien come les manors, terres, tenements & auters hereditaments in meſme Laſt ſpecifie.

Et puis per auters Letters des ſeigniors del Councell, 27 Sept. 1612. les deux Chief Juſtices & Chief Baron fuere require a conſider del dit caſe (que fuit encloſe deins leur Letters) & a certifie leur opinions de ceo.

Quel caſe fuit argue per Councell erudite del dit County devant les dit Chief Juſtices & Chief Baron, ſur que ilz preſteront adviſement (apres que ilz

ilz ont divers foitz lye le Preamble & tout le dit Act de 28 H. 8.) jesque a Term de St. Mich. Anno decimo Jacobi Regis, & donques fuit unement resolve per eux come ensuist.

Quant al primer fuit resolve, que intant que nappiert que ascun defence fuit requiste, & que le consideration executory nest trove per office destre infreint, ne judgement done in Scire Fac', a cest cause que le dit Countee de Salop, ceo nient obstant, remain Countee de Waterford.

Quant al 2 fuit resolve, que le dit Act de 28 H. 8. des Absentees nad tolle solement les possessions, que fuer' done a luy al temps de son creation, mes auxi le dignity mesme. Car coment que un poet aver dignity sauns ascuns possessions, uncore ceo serroit pleine de inconveniencie, & a cest cause le dit Act de 28 H. 8. (come tous auters Acts doient estre) serra expound douster tout inconveniencie, & pur ceo per les generall parols del Act, (sc. des honors & hereditaments,) le dignity mesme ove les terres dones un maintenance de ceo sont done al Roy, & le dignity extinct in le Corone.

Et est digne de observation le cause de degradation de George Nevill Duke de Bedford, que fuit fait per force dun Act de Parliament, 16 Jan. An. 17 E. 4. quel Act reciting the erection and making the said George Duke, expresse le cause de son degradation in ceux parols.

Rot. Parl. tent.
apud Westm'
16 Jan. Anno Re-
gis 17 E. 4. Degra-
datio Geor. Ducis
Bedford.

And for so much as it is openly known, that the said George hath not, nor by inheritance may have any livelichod to support the said name, estate, and dignity, or any name of Estate, as oftentimes it is seen, that when any Lord is called to high estate, and have not livelichod convenient to support the same dignity, it induceth great poverty and indigence, and causeth oftentimes great Extortion, Imbracery, and Maintenance to be had, to the great trouble of all such Countries where such Estate shall happen to be inhabited. Wherefore the King by the advice of his Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, and by the Authority of the same, ordaineth, establisheth and enacteth, that from henceforth the same erection and making of the same Duke, and all the names of dignity to the said George or to John Nevill his father be from henceforth void and of none effect, &c.

In quel Act 3 choses fuer' observee, 1. Que coment le dit Duke navoiet ascun possessions a supporter son dignity, uncore son dignity ne poet estre tolle de luy sans Act de Parliament. 2. Les inconveniencies appiert ou grand estate ou dignity nest pas accompany ove livelichod. 3. Ceo est bone cause a toller le dignity per Parliament, Et pur ceo le dit Act de 28 H. 8. serra expound selonque le generalty del letter a toller tiel inconveniencie. Et coment que le dit Countee de Salop soit non solement de grand honor & vertue, mes auxi des grand possessions in Engleterre, uncore ne fuit l'intention del Act a continuer luy Countee in Ireland quant ses possessions in Ireland fuer' tolle de luy, mes que le Roy a son pleasure puit conferre cibien le dignity, come les possessions a ascun auter pur le defence de mesme le Realm. Et les dits Letters Patents de An. 29 H. 8. nad parols a restorer le dignity que Laet de Parliament ad tolle, auxi ne fuit l'intention del Roy diminuer le statum, honorem & dignitatem ipsius Comitatus, sed augere, ceux sont destre entendes des possessions pur maintenance de son dignity, car tant appiert per cest parol [augere] car il increase per mesme les Letters Patents ove exceeding grand bounty le revenues del dit Countee de Salop en Angleterre, quel le Roy pense fuit un increase de son state, honor & dignity, issint son dignity in Angleterre fuit increase ove large possessions in Angleterre in lieu de tout ceo que fuit tolle de luy per Laet de 28 H. 8. Et on fuit object que les general parols [des honors

nors & hereditaments] sont explain & qualifie per les dits relative subsequent (queux le dit George Countee de Salop ou ascun auter a son oeps,) & pur c' ne serra entende dascun honor ou hereditam't mes dont auters poient estoier seise al use, & ceo nulpoet del dit dignity, & pur ceo le dit Act extender a ceo. Mes ceo est destre prise reddendo singula singulis, & les parols queux le dit George Countee avoit sont sufficient a passer le dignity, & ove ceo accord le opinion de tous les Justices Dengleterre in Nevils case, sur antiel parols in le Statute 26 H.8. in le 7 part de mes Reports, f. 33 & 37.

Rot. Pat. 3 R. 2.
nu 42.

There is an Act made in 3 H. 2. worthy here of remembrance, which never was yet printed. It is enacted, that all manner of persons whatsoever, who have any lands or tenements, offices or other living Ecclesiastical or Temporal within Ireland, shall reside or dwell upon the same. And that all such as have there any Castles or other Forts, shall fortifie the same and furnish it with men able for defence, and thereupon also dwell. And if they at any time depart, then during their absence to appoint some able to supply his room, otherwise the Governor to dispose the half of their Living to such defence. See the Act at large, necessary to be put in execution in these days.

Rot. Par. 21 E. 1.
Rot. 3. Hibernia.

Dominus Rex vult & præcipit quod de cætero singulis annis semel in anno computus Hiberniæ, &c. per Thesauri Hiberniæ reddatur ad Scaccarium Angliæ, & ibidem audiatur per Thesauri & Barones suos. A necessary Law, and much for the benefit of the King to be observed.

Trin. 13 E. 1. Coram Rege Rot. 38. in breve de errore, Hibernia.
Apud Westm'. 22 E. 1. Rot. 4. in breve de errore Int' William de Vesey & P. filium Thomæ, & Rot. Parl. 23 E. 1. 5 E. 2. error 19. 15 E. 3. ibid. 72. 34 Ass. p. 7. Reg. F. N. B. fol. 24. c. 11 H. 8. Kelw. 202. 15 E. 3. Record 38. a Pasch. 28 E. 1. Coram Rege Rot. 98. Hibernia. b Tr. 33 E. 1. Coram Rege Rot. 124. Hibernia. c Tr. 18 E. 3. Coram Rege Rot. 148. Hibernia. Sir Elias Ashburnhams case. d Pasch. 24 E. 3. Rot. 25. Coram Rege Cornubia. e Braet. l. 5. f. 195. 7 E. 3. 9. 12 E. 3. 41, 42.

A long Record touching the custody of the body and lands of heirs within age, wherein these words are contained. Et cum una & eadem lex esse debeat tam in regno Angliæ quam Hiberniæ. Like writs of Error of judgments given in the Kings Bench in Ireland, Mich. 32 E. 1. Coram rege. Theobald Verdon's case, Breve de errore super bre de errore Rot. 76. Pasch. 30 E. 1. Coram Rege Rot. 50. in breve de errore, &c. William de la Rivers case, Et Trin. 33 E. 1. Rot. 56. a Concordatum est per omnes de Concilio Regis, Episcopis & aliis in Hibernia unanimiter, quod consuetudo usitata in Hibernia de bonis testatorum talis est, quod ubi, &c.

b Prifage vinorum in Hibernia, and the manner of the taking of the same.

At a Synod holden in Ireland by St. Patrick their Apostle, it was unanimously agreed that Irish Priests should have wives.

c Tres Petitiones porrectæ Regi contra Eliam de Ashburnham militem Justiciar' Domini Regis in Hibernia de diversis malefactis, &c. per ipsum perpetratis, qui dicit quod non debet tractari, nisi in Hibernia, & ibidem terminari: & quod oportet ipsum Dominum Regem informari per indictmentum 12 Jur' vel per Appellum formatum & Attachiament' ad sectam partis secundum legem & consuetudinem Regni Regis Angliæ hætenus usitat'. Curia vult inde advisari, & interim manucapitur. Postea Dominus Rex mandavit breve quod caperent manucapt' ad respondend' in Hibernia.

d Admittitur Episcopus Exon' pro fine 200 Marc' pro contemptu in non admittendo presentatum Regis ad Ecclesiam de Southwell, pro quo contemptu omnia Temporalia seiscita fuerunt in manus Regis, & tunc temporis ante finem fact' vacavit Archidiaconat' Cornubiæ ratione quod incumbens electus fuit in Archiepiscopum Dublin in Hibernia (temporalibus Episcopi Exon' ad tunc in manibus Regis existen') per quod Dominus Rex recuperavit vers. Episcopum dict' Archidiaconat'.

In this Record two conclusions are to be observed. 1. Though Ireland (as hath been said) be a distinct Kingdom of it self, yet it is governed by one and the same Law that England is. 2. That when the Archdeacon was by the King preferred to a Bishoprick, he had the presentation to the Archdeaconry in respect

respect of the Temporalities of the Bishop of Exeter Patron of the Archdeaconsry, and not by any a prerogative. And so it is, if an Incumbent in Ireland be made a Bishop in England.

If a Bishop in England be made a b Cardinal, the Bishoprick becomes void, and the King shall name the successor, because the Bishoprick is of his Patronage.

c 45 E. 3. 9. upon the repeal of a Ratification of the Incumbent, a Proceeding out of the Chancery here to the Justices in Ireland to proceed in the Quare Impedit brought by the King.

I find an ancient Record touching Ireland necessary to be explained, in these words.

d *Rex Thesaurario Hiberniæ, Salutem. Cum Edwardus primogenitus noster terram Hiberniæ habeat & teneat de dono nostro cum omnibus pertinentiis suis adeo libere & quiete sicut eam in manu nostra teneremus, per quod charissima filia nostra Alianora consors dicti filii nostri Aurum suum tam de finibus quam sponte oblati in terra Hiberniæ habere debet, sicut charissima consors nostra Alianora Regina Angliæ Aurum suum habet de eisdem in regno nostro Angliæ: Vobis mandamus, &c. quatenus præfate consorti filii nostri prædicti Aurum prædictum de finibus & sponte oblati, & etiam de quibuscunque aliis finibus prædictis habere facias in forma prædicta. Et hoc, &c. In cuius, &c. Teste Rege 29 die Februarii, Anno 52 H. 3.*

By this Record first it appeareth, that, as the Law was taken at that day by gift of King H. 3. his eldest Son Prince Edward was Lord of the Dominion and Lordship of Ireland. Secondly, that albeit the wife of Prince Edward was not Queen in name, but had the effect of it, therefore she should have a duty called Aurum Reginæ, as well as the Queen of England, being but Lady in Ireland. e For albeit the Kings of Ireland were (until the Statute of 33 H. 8.) styled by the name of Lord of Ireland, yet was he supremus, and absolute Dominus, and had royal dominion and authority, and that his Consort was in rei veritate Regina, or else she could not have had Aurum Reginæ.

Albeit this Royal Dominion and Land of Ireland was of ancient time permitted to be granted de facto to the Kings Sons before mentioned, yet by the Law the King by his Letters Patents could not grant so Royal a member of his Imperial Title to any, no more then he could do of the Kingdom of England. And that doth well appear by this, that when King R. 2. by his Letters Patents created Robert de Vere Earl of Lincoln, and Marquess of Dublin to be Duke of Ireland, he granted to him for life * totam terram & Dominium Hiberniæ, & Insulas eidem terræ adjacentes, ac omnia Castra, Comitatus, Burgos, Villas, * Portus Maris, &c. una cum homagiis, * obedientiis, vassalis, serviciis, & recognitionibus Prælatorum, Comitum, Baronum, &c. * advocacionibus & patronatibus Ecclesiarum Metropoliticarum & Cathedralium Abbatiarum, &c. * constituere Cancellar, Thesaurar, Justiciar, &c. cum regaliis, regalitatibus, libertatibus, &c. & omnibus aliis * quæ ad regaliam nostram pertinent, * cum mero & mixto Imperio, adeo plene, integre, & perfecte, sicut nos ea tenuimus & habuimus, tenuerunt & habuerunt progenitorum nostrorum aliqui ullis unquam temporibus retroactis. Tenendum per * Homagium ligeum tantum.

g The said Letters Patents were authorized by Parliament, Assensu Prælatorum, Ducum, & aliorum Procerum, & Communitatis nostræ Angliæ in Parlamento, &c. albeit it was contra legem & consuetudinem Parliamenti, as before it appeareth, pa. 13, 14. to assent to any thing to the disherison of the King and his Crown. Sed novus iste insolitus & umbratilis honor cito evanuit.

Rot. Par. 13 R. 2. nu. 21. the King by authority of Parliament gave the title of Duke of Aquitaine to his Uncle John of Gaunt, Duke of Lancaster, and it was

A a a

a This is apparent by many authorities. Trin. 32 E. 1. coram Rege, Rot. 75. John de Bonhams case. 17 E. 3. fo. 40. 21 E. 3. 40. 41 E. 3. 5. 46 E. 3. 32. 6 El. Dier 228. b. pl. 48. resolve. b Rot. Par. 18 H. 6. part 2. m. 24. A Bishop made a Cardinal. c 45 E. 3. fol. 9. d Rot. Par. Anno 52 H. 3. m. 26. Aurum Reginæ.

The like grant was made of the Land of Ireland by H. 2. to his Son John.

f 33 H. 8. cap. 1. And so it appeareth by this Act that the King and his Progenitors had before this A Kingly Jurisdiction and Royal Authority. f See before pag. 13, 14. the grant of King John to the Pope declared to be void by the Parliament in 40 E. 3. These thus (*) marked cannot be granted by Letters Patents.

* Per Hom. ligeum for tenant for life could not do other homage. g Rot. Par. 9 R. 2. m. 2 & Rot. Par. 9 R. 2. nu. 9 & 10. m. 3.

by consent of Parliament, and could not be granted by Letters Patents, because it was one of the titles and stiles of his Royal Crown. And this also did first begin and end in him.

Aurum Regina.

But now it is necessary to be known what this duty of Aurum Reginae is. Wherein three things are to be considered. First, what authority and warrant in Law there is for this duty. Secondly, what it is. Thirdly, what is due thereby. First, in Lib. Rub. in Scaccario fo. 46. de Auro Reginae, where it is said, that it is to be taken de hiis qui sponte se obligant Regi, &c. This present Record of 52 H.3. Vet. Mag. Carta 2. part fo. 65. Vid. 10 H.3. Stat. de Roteland to the same effect.

Hil. 4 E. 1. in
Scac. ex parte
Rem. Reg. Hil. 12
E. 3. Ibid. Rot. 3.

A Record in the Exchequer Termino Hil. Anno 4 E. 1. Another there, Hil. 12 E. 3. Rot. 3. ex parte Rem. Regis, and divers other Records in the Reigns of R. 2. H. 4. &c. until the Reign of H. 7.

Rot. claus. 12 E. 3.
part 1. m. 21.

In Acts of Parliament, viz. 15 E. 3. cap. 6. 31 E. 3. cap. 13.

2. In divers of these Records it appeareth that the Queen should have de sponte oblati * pro centum marcis argenti unam marcam auri solvend per ipsum qui sponte se obligat. And Pasch. 4. Jacobi Regis the King did require the two Chief Justices and Chief Baron to certifie him what belonged to the Queen for this duty at this day. And after many conferences, and hearing of Council learned on both sides, and view of Records, at last it was resolved by them all, and so did Popham Chief Justice report to the King, that the duty belonged to the Queen with these four limitations. 1. It must be sponte from the subject, and at his pleasure whether he will give it or no, and no right in the Crown. And therefore fines for offences, for alienations, or the like, are no part of this duty. 2. It must be freely, without any consideration of any grant, sale, or lease of any thing wherein the King hath any revenue, estate, or interest. And therefore Sales, Leases, Grants of Lands, Tenements, Wardships, or the like, are out of the same, for there is quid pro quo. 3. It must be sponte super aliqua consideratione, &c. For example, if the subject sponte offer to the King for a licence in Portmain, or to create a Tenure of himself, or to have a Fair, Market, or to make a Park, or the like, where the King diminisheth no part of his revenue, state or interest, there Aurum Reginae is due to the Queen. 4. Of Subsidies, Fiftieths, or any other gratuity of the meer grace or benevolence of the subject, there is nothing due to the Queen, and so it was resolved, Hil. 4 E. 1. &c. ubi supra. And so much upon this occasion de Auro Reginae.

Rot. Parl. 7 R. 2.
nu 61.
Certain Irish words
necessary to be ex-
plained.

a Thane apud Bri-
tannos pro viro
nobili, aut Regis
ministro.

b Brehons Bellagi-
nes.

c Parliament 40
E. 3. at Kilkenny.

d Cuttings.

e Colherie.

a A Tainist was successor apparent under the chief Lord or Captain of every feveral Country, and was eligible by the Country.

b Brehon. The Irish called their Judges Brehons, and thereupon the Irish Law is called the Brehon Law.

c At a Parliament holden in Ireland by Howel Duke of Clarence, Lieutenant there, Anno 40 E. 3. at Kilkenny, and therefore called the Statute of Kilkenny, the Brehon Law is no Law, but a lewd custom crept in of later times, and never was the Law of the ancient Britains from whom they are descended.

d Cuttings. Under that name they comprehend Tallages and Impositions.

e Colheries are preheminations, when the chief Lord and his retinue, &c. came to his Tenants house, and fed upon their provisions till all were spent.

Termondland.

Erick.

Galloglasses.

Kernes.

Termondlands are the Glebe of the Church.

Erick signifieth a fine for an offence.

Galloglasses, Equites Triarii qui securibus utuntur acutissimis.

Kernes sunt pedites qui jaculis utuntur.

The Prorex there in former times hath been called Custos, Warden, Lieutenant, Chief Justice, Deputy of Ireland.

These Expositions we have added for the better instruction of him who will read the Irish Laws.

Rex, &c. Johanni Marefcallo dedimus & concessimus pro Homagio & servicio suo Marefcaliam nostram totius Hibernie cum omnibus pertinentiis, &c. Habendum sibi & heredibus suis de nobis & heredibus nostris.

Rot. Pat. 9. Johannis Regis Johannis Marefcallo, of whom the Lord Morly is descended.

Registr. 294.

See the Register, that if an Archbishoprick or Bishoprick in Ireland be void, that the Chapter shall sue to the King in England to go to election, and after election made they ought upon certificate thereof made to the King to obtain his Royal Assent to this Election, and thereupon a Writ shall be directed out of the Chancery here, to the Chief Justice of Ireland, or his Lieutenant, rehearsing all this matter, and commanding him to take fealty of the Bishop, and to restore him to his Temporalties. But now the course is in Ireland to make such Writs there in the name of the King. But the King names the Archbishops and Bishops there, as he doth in England; and then the Chapter chose him whom the King names to them, and thereupon the Writs are made of course.

F.N.B. 169, 170.

And the reason of this change is worthy to be known: for the Charter of King John for Election of Bishops, &c. extended only to the Bishops, &c. of England. ^a But after that the whole Dominion of Ireland (as well concerning the Church as the Commonwealth) was established to be governed by one Law with the Kingdom of England, as is abovesaid, then the course of the Register was changed, and the same course taken there as it is in England.

^a Carta Johannis Regis 15 Jan. apud novum London Ann. 18. Bishops before were donative by the King.

And whereas heretofore some, not without scandal, have divided this Kingdom into the English Pale, and the wild Irish, ^b let oblivion bury it, or silence cover it, for now all are reduced to obedience and civil behaviour. So as a man may justly say of them as of the old Britains, Sunt in bello fortes, & in pace fideles. And for that some have given out that the Crown of England had this Country of Ireland of the donation of the Pope, we will ingenuously manifest the truth therein by the Records and Writings themselves at large.

10 E. 3. 1. b. per Perring.

17 E. 3. 40. per Stone, &c.

^b Auferat oblivio, si potest; si non, utrumque silentium tegat.

Altitonantis Dei largisua clementia, qui est Rex Regum, & Dominus dominantium, ego Edgardus Anglorum Basileus, omniumque rerum Insularum Oceani quæ Britanniam circumjacent, cunctarumque Nationum quæ infra eam includuntur Imperator & dominus, gratias ago ipsi Deo Omnipotenti Regi meo, qui meum imperium sic ampliavit & exaltavit super regnum patrum meorum. Qui licet Monarchiam totius Angliæ adepti sunt a tempore Athelstani, qui primus Regum Anglorum omnes Nationes quæ Britanniam incolunt sibi armis subegit, nullus tamen eorum ultra fines imperium suum dilatare aggressus est. Mihi tamen concessit propitia Divinitas cum Anglorum imperio omnia regna Insularum Oceani cum suis ferocissimis Regibus usque Norvegiam maximamque partem Hiberniæ, cum sua nobilissima Civitate de Dublin Anglorum regno subjugare, quos etiam omnes meis imperiis colla subdere, Dei favente gratia, coegi. Quapropter & ego Christi gloriam & laudem in regno meo exaltare, & ejus servitium amplificare devotus disposui. Et per meos fideles fautores, Dunstanum, viz. Archiepiscopum Ayelyolanum ac Oswaldum Archiepiscopos, quos mihi patres spirituales & consiliatores elegi, magna ex parte disposui, &c. Facta sunt hæc Anno domini 964. Indictione 8. Regni vero Edgari Anglorum Regis 6. in regia urbe quæ ab incolis Ocleayceastriæ nominatur in natale Domini festivitate sanctorum Innocentium feria 4. &c. ✠ Ego Edgar Basileus Anglorum, & Imperator Regum gentium, cum consensu & Principum & Archiepiscoporum meorum hanc meam munificentiam signo meo corroboravi. ✠ Ego Alfrye Regina consensi & signo Crucis confirmavi. Ego Dunstan Archiepiscopus Dorobor' Ecclesiæ Christi consensi & subscripsi. ✠ Ego Osticel Archiepiscopus

The Charter of King Edgar made Ann. Dom. 964. and in the 6 of his reign.

King Athelstane reduced England to a Monarchy.

King Edgar conquered the greatest part of Ireland, with the most noble City of Dublin. Note the piety of this King.

Int. leges Edw. Regis & Confessoris fo. 137. b. Lamb.

Arthurus qui quondam fuit inclytissimus Rex Britannorum, &c. subjugavit sibi strenue (inter alia) Hiberniam, &c.

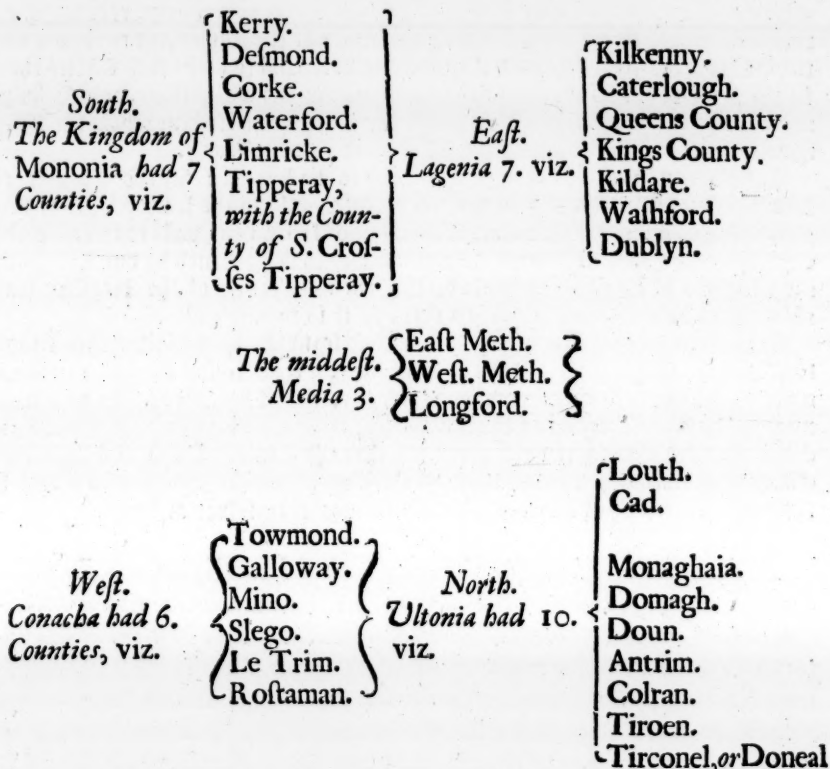
Eboracensis Ecclesie consensi & subscripsi. Ego Alferic Dux. Ego Buthond Dux. Ego Aridgary Dux ✠

Mich. 3 E. 3. coram
Rege Rot. 43.
Hibernia.

And what Ecclesiastical Jurisdiction the Archbishop of Canterbury had in Ireland of ancient time before it was subject to the Crown of England, you may read in Camdens Britannia, pag. 735. & 765. as namely in the Consecration and Confirmation of their Bishops, by reason of his Primacy in Ireland.

A Justice in Ireland constituted by Letters Patents under the great Seal of England, cannot be removed from his office but by the King only.

Of the Pentarchy of Ireland.



Ireland hath 33 Counties, besides Cities, that are Counties of themselves.

King H. 2. at a Parliament holden at Oxford, Anno regni sui 23. created his Son John King of Ireland. But the succeeding Kings wrote themselves Domini Hibernia, until the 33 year of H. 8. in which year he took upon him the name of King of Ireland.

Rot. Parl. 3 R. 2. nu.
43. in England.
Mines of Gold and
Silver.
Bra. li. 2. fo. 222.
Fleta lib. 4. fo. 119.
Pl. Com. in the case
of Mines.
Coinage at Dublin.
* Rot. Pat. 5 H. 6.
1 part.

It was enacted by Authority of Parliament, that every man during six years might dig in his own proper soile in Ireland Gold or Silver, &c. yielding to the King the ninth part thereof, and that they make Plate or Coin thereof at the Kings Coinage in Dublin, paying the fees: and that none carry thereout any of the said Gold, Silver or Bullion, but into England, without the Kings licence, on pain to lose the same.

* A grant of all Mines of Gold and Silver within England, &c. to the Duke of Bedford Regent of France, &c. rendering to the Church the tenth part: to the King the sixteenth part: to the owner of the soile the twentieth part.

To conclude with somewhat which tends to the honour of that Noble Nation. Certain it is, that whiles the Liberal Sciences in Europe lay in a manner buried in darkness, then did their lustre shine forth most clearly here in Ireland; thither did our English Saxons repair, as to a Fair or Market of good Letters:

Letters: whence of the holy men of those times we often read in ancient Writers, *Amandatus est ad disciplinam in Hiberniam*: he was sent into Ireland to study there.

Camden in Hibernia.

He that is desirous to read more Records concerning this Kingdom of Ireland, he may read these *Coram Rege* in the Kings Bench. Trin. 13 E. 1. Rot. 36. 38. Hibernia. Mich. 17 E. 1. Rot. 31. 38. Hibernia. Hil. 19 E. 1. Rot. 68. Hibernia. Pasch. 19 E. 1. Rot. 69. Hibernia. Trin. 20 E. 1. Rot. 40. Pasch. 34 E. 1. Rot. 104. Mich. 5 E. 3. Rot. 40 & 46. Mich. 6 E. 3. Rot. 55. Hibernia.

¶ Of the precedency of the great Officers, Nobility, and others of this Realm.

For of the precedency of the King himself and of other Kings and supreme Princes, I take not upon me to write, but refer you to learned Camden, Lib. Annal. Anno Domini 1600. 42 Eliz. pag.

At the Common Law, the King by his Prerogative Royal might give such honoz, reputation and placing to his Counsellors and other his subjects as should be seeming to his wisdom, which Prerogative was so declared by Act of Parliament.

By this Prerogative, Henrico Beauchamp concessit Rex Henricus Sextus, ut primus & præcipuus esset Angliæ Comes, & hoc titulo uteretur; Henricus Præcomes totius Angliæ & Comes Warwici, Vectæ Insulæ regulum dixit; posteaque Ducem Warwici creavit, & concessit, ut haberet sedem in Parliamentis, & alibi proximam Duci Norf. & ante Ducem Buckinghamiæ.

The same King created Edmond of Hadham to be Earl of Richmond, and granted him precedency before all other Earls. He also created Jasper of Hatfield Earl of Pembroke, and gave him precedency before all other Earls next to his brother the said Edmond Earl of Richmond. But hereof these examples shall suffice.

King H. 8. though standing as much upon his Prerogative as any of his Progenitors, yet finding how vexatious it was to himself, and how distastful to his ancient Nobility to have new raised degrees to have precedency of them, and finding that this kind of controversie for precedency was of that nature, that it had many partakers, spent long time, and hindered the arduous, urgent and weighty affairs of the Parliament, was content to bind and limit his Prerogative by Act of Parliament concerning the precedency of his great Officers, and of his Nobility. And first for the Lords Spiritual (who sit in Parliament on the Kings right hand) amongst themselves.

1. The Archbishop of Canterbury. 2. The Archbishop of York on the same form. 3. The Bishop of London. 4. The Bishop of Duresme. 5. The Bishop of Winchester, and then all the other Bishops of both Provinces shall sit and be placed after their Anciencies, as before this Act was accustomed. But having regard to the Lords and noble Peers of the Realm, both the Archbishops have place above all the great Officers and Nobility in Parliament, Council and Commissions, saving in the Star-chamber, the Lord Chancellor or Lord Keeper hath the precedency of them. But the other Bishops have place above all the Barons of the Realm, because they hold their Bishoprick of the King per Baroniam, but they give place to Viscounts, Earls, Marquesses and Dukes.

Concer

Præcedere est præcedendo incedere. Qui præcellit præcedere debet. Most ancient is most honourable Aristot. 1 Metaph. cap. 3. 11 H. 8. c. 10. in the Preamble. 4 Rot. Pat. 23 H. 6. Vid. Rot. Pat. 28 H. 6. 2 parte m. 23. Precedency granted to R. Earl of Warw.

31 H. 8. cap. 10.

Nota, The Lord Steward of England is not here mentioned, because it was intended that when the use of him should be necessary, he should not endure longer then *hac vice*.

* 1. The Kings Grandchild.
Note the degrees within that Act.

Concerning the great Officers of the Realm. 1. The Lord Chancellor, or Lord Keeper of the Great Seal. 2. The Lord Treasurer. 3. The Lord President of the Kings Council. 4. The Lord Privy Seal, being of the degree of Barons of Parliament, or above, shall sit and be placed in Parliament on the higher part of the form above all Dukes, except only such as shall happen to be the Kings Son, the Kings Brother, the Kings Nephew, or the Kings Brothers or Sisters Sons. See an Act made in 28 H.8. c. 18. making it treason for marrying, &c. with any of the blood Royal within certain degrees: but it is repealed. 5. The Great Chamberlain of England. 6. The Constable. 7. The Marshal. 8. The Lord Admiral. 9. The Lord Steward of the Kings house. 10. The Kings Chamberlain shall sit and be placed after the Lord Privy Seal in manner and form following, viz. every of them shall sit and be placed above all other Personages being of the same state and degree: as if he be a Baron, above all Barons: if a Viscount, above all Viscounts: if an Earl, above all Earls, &c. 11. The Kings principal Secretary being a Baron of the Parliament shall sit above all Barons not having any of the offices aforesaid. But if he be a Viscount, an Earl, or any other higher degree, he shall not take the place of any Viscount, Earl, or higher degree, as it was resolved in the case of Robert Cecil, Earl of Salisbury. And if the Secretary be a Bishop, he shall take the place of all other Bishops not having any of the offices aforesaid, but not above the Archbishops.

The general clause

All other Dukes not before mentioned, Marqueses, Earls, Viscounts and Barons, not having any of the offices aforesaid, shall all sit and be placed after their Anciency, as hath been accustomed.

¶ All other Dukes, &c. If the King should create a Duke to the estate of Archduke, yet by force of these words he shall not take place of any Duke that was his Ancient, Et sic de similibus: otherwise this Statute might be made of no force; and an Archduke is some other Duke.

If any person being Lord Chancellor, Lord Keeper, Lord Treasurer, Lord President, Lord Privy Seal, or Chief Secretary, shall be under the degree of a Baron of Parliament, they shall in Parliaments sit in the uppermost part of the Sacks in the midst of the Parliament Chamber, &c. But in the Star-chamber, and all other Assemblies and conferences of Council, they shall sit and be placed as is above rehearsed; and in * no other place. Lastly, The Lord Chancellor, Lord Keeper, Lord Treasurer, Lord President, Lord Privy Seal, being Lords of Parliament: The great Chamberlain, the Constable, the Marshal, the Lord Admiral, the Lord Steward, the Kings Chamberlain, and the Kings Chief Secretary shall sit and be placed in such order and fashion as is above rehearsed, and not in any other place, by Authority of this Parliament. Vid. Statut. de 10 R.2. cap. 1.

* The words negative were added to avoid all scruple, that the order for precedence set down in this Parliament should not be altered by any non obstante.

a Rot. Parl. Anno 3 H.6. in principio, & nu. 10.

b Rot. Parl. 27 H.6. nu. 18.

Vide Rot. Parl.

11 H.6. m.9. nu. 32

33, 34, 35. between

the Earl of Arundell and Moubrey

Earl of Norf.

Rot. Parl. 3 H.6. in

principio cited in

the Earl Marshalls

case.

c Hol. Chron. pag.

620. 10.

Hall 143. &c.

Anno 20 H.6.

d Rot. Parl. 6 H.6.

nu. 22, 23, 24.

a He that is desirous to understand the true Rules of Precedency of the Nobles of this Realm in the High Court of Parliament, &c. let him read the great case between John Earl Marshal, and Richard Earl of Warwick, in Parliament, and the affirmations, answers, and replications on both parts exceeding long, but full of notable rules, reasons, and precedents concerning Precedency, both in respect of the Blood Royal, and otherwise: together with the Lines and Pedegrees, Seats, and Places of many Noble Men very delightful to be read.

b Another between William Earl of Arundel, and Thomas Earl of Devon: wherein you shall read notable matter concerning the Castle and Honor of Arundel precedently adjudged by the Lords in Parliament in the reign of H.4. between the Earl of Arundel and the Earl of Kent.

c If a Bishop of this Realm be made a Cardinal, he shall not take any place of precedence in Parliament as Cardinal, but take his place in right of his Bishoprick, which he holdeth of the King per Baroniam, in respect whereof he sitteth in Parliament.

d If a Duke or Earl, &c. be made Protector of the Realm in Parliament, he shall

shall have no other place but as a Duke or Earl, &c. Hereby you may perceive how necessary it was to set down by authority of Parliament in certainty the place and precedency that great Officers should have in Parliament, who sit not there in right of their Offices, but of their Nobility: And the names of dignities of the Nobility are parcel of their names, and so ought to be named in the Kings Writs: but the Offices of Chancellor, Treasurer, and other Offices are not parcel of their names, & therefore in the Kings Writs need not to be so named.

It is also enacted by Authority of the said Act of 31 H. 8. that in all trials of Treasons by the Peers of this Realm, the said great Officers of this Land shall sit and be placed according to their Offices, above all other the Peers, as is aforesaid.

We have perused the List of the names of the Lords of Parliament sitting in Parliament both of ancient and later time, wherein we can gather no certainty for precedency.

Thus far for avoiding of contention about precedency in Parliaments, Star-Chamber, and all other Assemblies and Conferences of council, and upon trials by the Peers of the Realm was necessary.

Now he that desireth to know the places and precedency of the Nobility and Subjects of the Realm, as well men as women, and of their children: we for avoiding of tediousness will refer them to a Record of great authority in the Reign of H. 7. (for we will not vouch Barth. Cassaneus or any other foreign Author) intituled Series ordinum omnium procerum, magnatum, & nobilium, & aliorum quorumcunque infra hoc regnum tam virorum quam foeminarum, posita & distincta per nobilissimum Jaspardum Ducem Bedford & alios nobiles appunctione Domini Regis Henrici septimi: (but this Record dealeth not with the places of any of the great Officers) whereunto we will refer you: wherein you shall see what places both the Sons, * Wives, and Daughters, of Lords of Parliament, as Dukes, Marquesses, Earls, Viscounts, and Barons shall have, and of Bannerets, Knights, Esquires, and Gentlemen, and of their Wives and Children shall have.

If any question be moved in Parliament for privilege or precedency of any Lord of Parliament, it is to be decided by the Lords of Parliament in the house of the Lords, as all privileges, and other matter concerning the Lords House of Parliament are, as privileges and other matters concerning the House of Commons are by the House of Commons to be decided.

The determination of the places and precedencies of others doth belong to the Court of the Constable and Marshal, unless any question riseth upon the said Act of Parliament of 31 H. 8. for that being part of the Law of the Realm (as all other Statutes be) is to be decided by the Judges of the Common Law.

g Nobilis est qui generis sui imagines proferre potest. h Flavia gens obscura quidem & sine imaginibus.

Tota licet veteres exornent i undique Cera
Atria, nobilitas sola est atque unica virtus.

Major est nobilitas quam virtus: virtus enim sine nobilitate esse potest, nobilitas autem sine virtute esse non potest.

k Arma seu insignia gentilitia ex antiquo habuerunt loco imaginum. So as now the best discussing of antiquity of Gentry is per insignia.

— Armaque fixit
Troia —

Virgil.

And by the Laws of England as all the degrees of nobility and honour were derived from the King as the fountain of honour: * so all the Lands in Eng-

Seft. 1. fol. 9. b. Seft. 95. fol. 69. a. b. Seft. 112. fol. 83. b. Seft. 24. f. 165. a. Seft. 14, 15. f. 20. a. Seft. 137. f. 97. a. Seft. 201. f. 134. a. Seft. 648. f. 344. a. & c.

land

a 7 H. 6. fol. 152
Vid. Rot. Parl.

15 E. 3. nu. 7.

b This is put for an example, for it extendeth to all trials by Peers, not only in case of treason, but in case of felony, misprision of treason and felony, and so ever since this Statute hath it been put in use.

c Barth. Cassaneus in Catalogo gloria mundi.

d Series ordinum tempore H. 7.

e Vid. Camden Eliz. p. 475.

* Which we have added the rather, for that the contention about precedency between persons of that sex is ever fiery, furious, and sometime fatal.

Vid. the Parliament Rolls ubi supra.

f Vid. Rot. Parl.

31 H. 6. n. 27.

See 3 H. 6. nu. 10. between Mowbray Earl of Norf. and Beauchamp Earl of Warwick.

g Cicero. Plin. lib. 39. apud majores &c. optime.

h Tranquillus in Vesp.

i Juvenal. i. Cereæ imagines.

k Corte de Armes, A coat armor, that is, a long coat over armor with his Arms embroidered upon it.

* See the 1. part of the Institutes, Sect. 1. & c. and in that first part in divers places many things concerning nobility and their creations, and of the gaining and losing thereof, &c. viz.

Seft. 9. fol. 17. a. b. Seft. 9. fol. 17. a. b.

land were originally derived from the Crown of England, and are holden of the same mediately or immediately. &c. before in the Chapter of the high Court of Parliament.

As names make known singular persons, so Arms distinguish several Families.

It is worthy of remembrance, and fit for example, that when Thomas Lord Cromwel by a flattering Herald was offered in the time of King H. 8. to fetch his pedigree from the ancient Lord Cromwel, that he might bear his Coat, he answered that he would wear a Coat of his own, lest another mans Coat might be taken from him: unto whom the King, as advanced by him, gave this Coat, Quarterly indented per Fesse, Or and Azure, four Lions counterchanged: where the old Lord Cromwels Coat was Argent, a Chief Gules, a Bend Azure. The said Act of 31 H. 8. extendeth not to Archbishops and Bishops, therefore it is necessary to speak somewhat of them also. In ancient time they had great precedence, even before the brother of the King, as it appeareth by the Parliament Roll of 18 E. 1. and many others, which continued until it was altered by Ordinance in Parliament in the reign of King H. 6. as it appeareth by a Roll of Parliament of that Kings reign, entered in the back of the Parliament Roll. The precedence in Parliament, and other places of Council at this day (whereunto we aim) is, the two Archbishops have the precedence of all the Lords Temporal; and every other Bishop in respect of his Barony hath place of all the Barons of the Realm, and under the estate of the Viscount and other superior dignities. The Bishops between themselves have this precedence. First, The Bishop of London, and after him the Bishop of Duresme, and then the Bishop of Winchester, and after him every Bishop as he is in seigniority. But to this day, in all Acts, Ordinances and Judgments, &c. of Parliament it is said, the Lords Spiritual and Temporal.

Rot. Pat. 9 Jacobi
8 part. nu. 45.
Baronets and
others.

The first creation of Baronets was in An. 9 Jac. Regis: what place and precedence these Baronets and divers others shall hold, you may read Rot. pat. 10 Jac. Regis part. 10. m. 8. & Rot. pat. Anno 14 Jac. Regis part. 2. m. 24.

To conclude this Chapter with the Code of Theodosius, &c. Ut dignitatum ordo servetur, si quis indebitum sibi locum usurpaverit, nulla se ignoracione defendat, sitque planè sacrilegii reus.



THE EPILOGUE.



Thus have we by the great goodness of the Almighty brought this painful Work, consisting of such, and so many varieties and difficulties, concerning the Jurisdiction of such, and so many distinct Courts (above the number of 100.) to a conclusion: and in some few cases, where we have differed from others in opinion, we have shewed the cause and beginning of these errors (as we take them:) for it is a sure Rule, *Quod errores ad sua principia referre, est refellere*, to bring errors to their first, is to see their last. Wherein we have strengthened our opinion with our two great guides, Authority and Reason, and not trusted Abridgements, Polyantheas, or taken any thing upon trust, but have searched the Fountains themselves, alway holding this Rule, *Quod satius est petere fontes, quam sectari rivulos*: And our desired end is, that all these high and honourable Tribunals, and other subordinate Courts and venerable Seats of Justice may prosper and flourish in distribution of Justice, which assuredly they shall do, if they derive all their power and strength from their proper roots.

Whilst we were in hand with these four Parts of the Institutes, we often having occasion to go into the City, and from thence into the Country, did in some sort envy the state of the honest Plowman, and other Mechanicks; for the one when he was at his work would merrily sing, and the Plowman whistle some self-pleasing tune, and yet their work both proceeded and succeeded: But he that takes upon him to write, doth captivate all the faculties and powers both of his mind and body, and must be only intentive to that which he collecteth, without any expression of joy or cheerfulness, whilst he is in his work.

Throughout all this Treatise we have dealt cleerly and plainly concerning some pretended Courts, which either are no Courts warrantable by Law, as we conceive them, or which without warrant have inroached more jurisdiction then they ought. *Qui non libere veritatem pronuntiat, proditor veritatis est*. Wherein if any of our honourable friends shall take offence, our Apology shall be, *Amicus Plato, amicus Socrates, sed magis amica Veritas*. Having ever in memory that saying of the Kingly Prophet, *Keep innocency, and take heed to the thing that is right, and that will bring a man peace at the last*. Psal. 37, 38.

And you Honourable and Reverend Judges and Justices, that do or shall sit in the high Tribunals and Courts or Seats of Justice, as
A aforesaid,

The Epilogue.

Lib. Sap. cap. 17.
12. Nihil est timor
nisi proditio co-
gitationis auxilio-
rum.

* Psal. 5. 13.

Aristotle.

Edm. Flowden.

aforesaid, fear not to do right to all, and to deliver your opinions justly according to the Laws: for fear is nothing but a betraying of the succours that reason should afford. And if you shall sincerely execute justice, be assured of three things: First, though some may maligne you, yet God will give you his blessing. Secondly, that though thereby you, may offend great men and Favourites, yet you shall have the favourable kindnesse of the Almighty, and be his Favou-rites. And lastly, that in so doing, against all scandalous complaints and pragmatikall devices against you, God will defend you as with a shield:
* *For thou Lord wilt give a blessing unto the righteous, and with thy favourable kindnesse wilt thou defend him as with a shield.*

And for that we have broken the Ice, and out of our own In-dustry and observation framed this high and honourable Building of the Jurisdiction of Courts, without the help of furtherance of any that hath written this Argument before, I shall heartily desire the wise hearted and expert Builders (Justice being *Architectonica Virtus*) to amend both the method or uniformity, and the structure it self, wherein they shall find either want of windows, or sufficient lights, or other deficiency in the Architecture whatsoever: And we will conclude with the Aphorisme of that great Lawyer and Sage of the Law (which we have heard him often say) *Blessed be the amen-ding hand.*

Deo gloria & gratia.

FINIS.



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